



Mauritius – Caught in the Web of Empire:
the legal system, crime, punishment and labour 1825–1845

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Declaration of Originality

This thesis contains no material which has been accepted for a degree or diploma by the University or any other institution, except by way of background information and duly acknowledged in the thesis, and to the best of my knowledge and belief no material previously published or written by another person except where due acknowledgement is made in the text of this thesis, nor does the thesis contain any material that infringes copyright.

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ABSTRACT

Competition between European powers considerably complicated the development of Mauritius as a colonial society. This once uninhabited island in the Indian Ocean was first colonised by the Dutch (1598–1710), later by the French (1715–1810) and finally by the British (1810–1968). The cross-cultural connections that followed European colonisation saw Mauritius reflect not only European but also African and Asian ethnicities and civilisations, histories and ancestral cultures. The diverse cultural currents, language transmissions and mixing of legal systems saw Mauritius evolve into a unique modern colonial society.

The process of mixing two distinctive European legal traditions and the quest for political and judicial power saw Mauritius tangled and detangled in both British and French webs of justice. Through the lens of the law this thesis maps significant historical events and transitions impacting Mauritian society between 1825 and 1845. Examinations of a non-European cohort of convicts transported to the Australian penal colonies of New South Wales and Van Diemen's Land (Tasmania) in this period deliver new individual-level insights into the way the Mauritian judiciary passed sentences of penal transportation. A prosopographical analysis of this cohort of convicts further highlights the relationship between law, penal policy and labour and the colony's rapid economic, social and cultural transitions.

The intra-colonial transportation flow of forced migration between Mauritius and Australia was one of many within the Indian Ocean World. Collectively these flows demonstrate the increasingly intertwined movement of free and forced labour systems circulating around the British Empire. This thesis thus expands the transportation story out beyond the usual focus on the Australian penal colonies and the British metropole to include a small but significant colonial possession on the margin of empire

A set of rich, but rarely utilised Mauritian criminal trial records in French provides the main vehicle for this thesis and the analysis of this source will add to the scholarship of this Indian Ocean hub of unfreedom in the first half of the nineteenth century. Using these court records and other related historical sources, this thesis will shed light on the convergent views of the new British coloniser and the French-Mauritian slave owners, particularly regarding the slave trade, the moral and humanitarian aspects of slavery, the pro- and anti-slavery debate and labour migration. This thesis will also analyse the critical shifts from slave to apprenticed labour and the introduction of an experimental labour migration scheme and the inherent political, social, economic and cultural problems associated with such dramatic societal change. The aim of this thesis is to forge a link between colonial and metropolitan government institutions, criminal justice and labour systems, both coerced and free. This thesis will argue that this far-flung Indian Ocean Island became a colonial ‘laboratory’, a testing ground for imperial policies and ideas of law and order and social and economic progress. Furthermore, this thesis will engage with discourses relating to race, status and gender which were important issues in both colonial and British metropolitan societies. These intersecting historiographies advance understandings of Mauritius as a colonial society and show how this Indian Ocean colony mirrored many of the broader questions and

concerns regarding global imperial expansion and enterprise occupying early nineteenth-century European colonisers.

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Throughout my candidature I have benefitted from many intellectually stimulating conferences, seminars, symposiums, workshops, work in progress days and postgraduate workshops. Apart from events attached the University of Tasmania, in

particular events organised by the Centre for Colonialism and its Aftermath (CAIA) and Founders and Survivors, I have attended the Centre for Tasmanian Historical Studies conferences, Launceston Historical Society seminars, an international symposium at Keele University in England on ‘Courtrooms, the Public Sphere and Convicts’ and an international conference on the slave trade, slavery and indenture in Mauritius convened by the Truth and Justice Commission in Mauritius in collaboration with the University of Mauritius. With Katrina Ross and Dr. Tom Dunning I also had the opportunity to become involved in the organisation of the annual Australian Historical Association’s regional conference held in Launceston in 2011. As a participant in the CAL Bursary workshop held in conjunction with this event I had the opportunity to engage in stimulating conversations with other PhD students from around the country. A research trip to Sydney in August 2013 with Katrina Ross and Luke Clarke and later that year, with Penny Edmonds, attending and presenting a paper at a conference on colonial cities, also in Sydney, provided valuable opportunities to grow and learn.

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Source: TNA, CO 167/189.

ABBREVIATIONS

National Archives of Mauritius, Coromandel

IB	Evidence from the Commissioners of Eastern Inquiry
JA	Courts of Summary Jurisdiction
JB	Court of Assizes Proceedings (Trial Records)
NAM	National Archives of Mauritius
RA	Official Colonial Office Correspondence, Minutes, Ordinances and Miscellaneous documents

Other Locations

BDM	Birth, death and marriages, New South Wales
CO	Colonial Office, Kew, United Kingdom
DLADD	Dixon Library, Sydney, Australia
MAUR	Le Merle Collection – National Library of Australia, Canberra
PP	House of Commons Parliamentary Papers
PRO	Public Records Office, Kew, United Kingdom
SLNSW	State Library New South Wales (Mitchell and Dixon libraries)
SRNSW	State Records New South Wales
TAHO	Tasmanian Archives and Heritage Office, Hobart
TNA	The National Archives, Kew, United Kingdom
TP	Tasmanian Papers, Hobart, Tasmania and Sydney, Australia

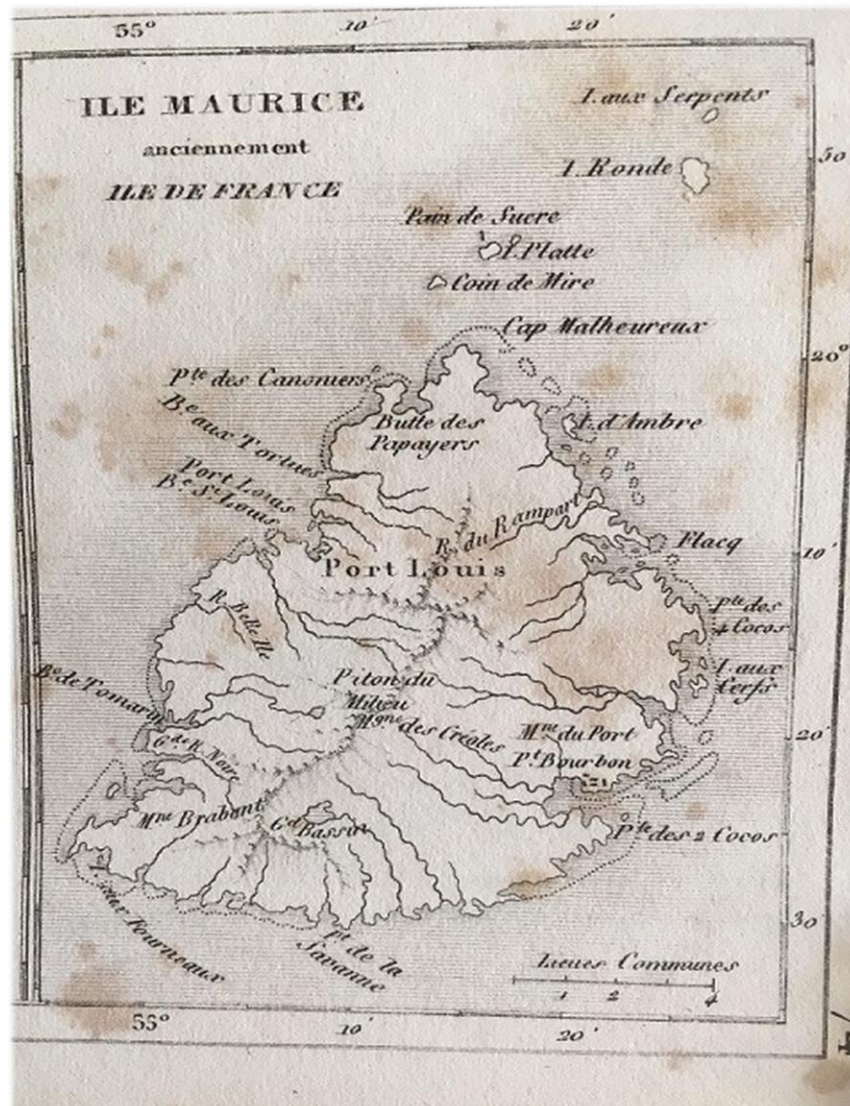


Figure 1 Map of Mauritius c. 1829: Private collection of the author. Atlas Classique Universel Géographique ancienne et modern par Victor Levasseur, Paris, c. 1829.



Figure 2 Map of Africa c. 1829: Private collection of the author. Atlas Classique Universel Géographique ancienne et modern par Victor Levasseur, Paris, c. 1829.

INTRODUCTION

It was a November spring day in Northern Tasmania when I opened a large envelope containing a bundle of documents sent to me from the University of Tasmania. Some weeks previously I had been asked to translate some early nineteenth-century French legal documents into English – my BA included a major in French. Inside the envelope I found sample copies of court transcripts originating from the British crown colony of Mauritius.¹ The transcripts were difficult to read but after a ‘crash course’ in early nineteenth-century French legal terms I made some headway. The more I translated, the more intrigued I became.

A series of complex stories started to emerge. The documents were part of trial summaries which had accompanied 136 convicts (including nine women), who had all been sentenced to transportation to Australia between 1825 and 1845.² The majority of these convicts had arrived on minor vessels from Mauritius but a few, who had initially been transported to Robben Island, had then been shipped to Australia on the larger convict ships stopping over in the Cape Colony on their way to the Australian penal colonies. The crimes which propelled these convicts to Van Diemen’s Land

¹ My sincere thanks must go to Luke Clarke, PhD candidate at the University of Tasmania, who initially unearthed many of the French trial summaries from Mauritius found in the Tasmanian Archives and Heritage Office in Hobart, Tasmania.

² I eventually managed to collect 96 of these ‘archival Estrays’ in the form of trial summaries of Mauritian convicts from various institutions Australia wide. These trial summaries (not the full trial records) were then translated from French to English by the author. Tasmanian Archives and Heritage Office (TAHO); State Records of New South Wales (SRNSW), NRS series; National Library of Australia (NLA), Le Merle Collection (MAUR); State Library of New South Wales (SLNSW), DLADD; Tasmanian Papers at TAHO, SRNSW and SLNSW. Following a research trip to Mauritius I obtained the full trial records of the majority of the 136 known convicts transported to Australia from the National Archives of Mauritius (NAM). This cohort of convicts does not include some sailors and around 60 soldiers court-martialled in Mauritius and sentenced to transportation to the Australian penal colonies.

(Tasmania) and New South Wales included attempted murder, murder, attempted rape, rape, arson, poisoning, forgeries and burglaries as well as various forms of theft.

I was struck by the diverse nature, not just of the offences, but also of the individuals who had been sent into exile for these often serious crimes. The offenders were mostly Africans, Mauritian-born Creoles and Asians (mostly Indians but also some Chinese).³ I became particularly interested in their pre-convict status as slaves, *affranchises* (freed prior to the abolition of slavery), apprentices (freed after the abolition of slavery) and ex-apprentices (freed after the abolition of the apprenticeship system) or indentured labourers. It struck me that this bundle of court records might provide an opportunity to explore the underbelly of an important site of colonial unfreedom. The confluence of African and Asian cultures and ethnicities within Mauritian society also offered the possibility to study a non-European cohort of felons.⁴ Here was a unique chance to extend the transportation story out beyond the usual focus on Australia and the British metropole to a colonial possession on the margin of empire.

Finally, this also presented me with the opportunity to merge my interests in language and history. One of the initial issues that had intrigued me related to the language used in these records. Why were these trial records, which pertained to British colonial subjects in a British colony, written in French? A quick reference to Mauritian history

³ There are three British men in this cohort of convicts transported to Australia from Mauritius between 1825 and 1845. NAM, JB 325, Court of Assizes, trial records of John Dyer, labourer, transported for seven years for theft, NLA, MS3639–box 1, fl 4, 14 Dec. 1842; NAM, JB 325, Court of Assizes, trial records of John William Davis, unemployed mariner, transported for seven years for burglary, 27 Mar. 1843, NLA, MS3639–box 1, fl 4, 27 Mar. 1843; NAM, JB 260, Court of Assizes, trial records for Thomas McGee, soldier, sentenced to 20 years in chains for murder, commuted to transportation for 20 years, SRNSW, NRS 1155, 2/8275, Court of Assizes, trial summary, 23 Mar. 1837, pp. 101–124.

⁴ I am aware that there is a risk of normative judgements here. However, in this thesis the term non-European is ‘shorthand’ for a very widespread polyglot/multicultural community which bridges many ethnicities and geographical origins.

gave the answer. Following annexation by the British in 1810, the French colony of Mauritius had successfully negotiated a Capitulation Proclamation which entitled those who had lived under French rule for almost 100 years to retain their property, their culture and traditions and their legal system with French as the legal language.⁵

This thesis derived from these initial explorations and engages with an emerging field of scholarly inquiry covering the colonial historiography of the Indian Ocean nodes of the British Empire, with special focus on Mauritius.⁶ It examines Mauritius between the years of 1825 and 1845, the period when a small but extraordinarily diverse and well-documented motley group of individuals were sentenced to transportation from Mauritius to the Australian penal colonies of New South Wales and Van Diemen's Land. The trial records of these transported convicts also offer an opportunity to explore what Vijayalakshmi Teelock refers to as a series of Mauritian 'dramatic transitions'.⁷

The aim of this thesis is to map some of these distinct transitions within Mauritian society in the first half of the nineteenth century. It will do so through the lens of the crimes committed by a cohort of male and female convicts transported from Mauritius

⁵ NLA, MAUREF 3; original draft copy of the Capitulation Proclamation, 3 Dec. 1810; TNA, CO 167/4, original Agreement of Surrender of Mauritius to the British Empire, 3 Dec. 1810. *Code de Isle de France et de Bourbon*, Deuxième Edition par M. Delaleu, Conseiller au Conseil Supérieur de L'île de France et Procureur du Roi du Tribunal de la même Ile, au Port-Louis – Ile Maurice.

⁶ Literature on the British Empire includes Christopher Bayly, *Imperial Meridian: The British Empire and the World: 1780–1830*, Longman Group, New York, 1989; Christopher Bayly, *The Birth of the Modern World 1780–1914*, Blackwell Publishing, Malden, 2004; Catherine Hall, *Cultures of Empire: colonizers in Britain and the Empire in the nineteenth and twentieth centuries*, Manchester University Press, Manchester, 2000; Fredrick Cooper and Ann Laura Stoler, *Tensions of Empire: colonial cultures in a bourgeois world*, University of California Press, Berkeley, 1997; Kerry Ward, *Networks of Empire: forced migration in the Dutch East India Company*, Cambridge University Press, Cambridge, 2009; Richard Price, *Making Empire: colonial encounters and the creation of imperial rule in nineteenth-century Africa*, Cambridge University Press, Cambridge, 2008.

⁷ Vijayalakshmi Teelock, *Mauritian History: from its beginnings to modern times*, Mahatma Gandhi Institute, Moka, 2009, p. xxi.

to the Australian penal colonies, studied here in detail as a group for the first time. By linking criminal justice and the labour systems applied to both coerced and free colonial subjects, this thesis will tie together these historical transitions into one single narrative. Reading across rich French and British colonial archives from 1825 to 1845, I will also explore the mixing of two legal systems in Mauritius and the critical shifts from slavery to apprenticeship to indenture, revealing the tense and protean social relations that emerged in the colony. Key questions which will be addressed are: how did a form of ‘indirect rule’⁸ and the French legal system impact on the British administration’s ability to govern Mauritius after annexation in 1810; in what ways can Mauritius be considered a testing ground for imperial policies and ideas; how did the crimes committed by the convicts signpost the rapid changes within Mauritian society; in what ways does the trans-institutional history of the convicted felons in Mauritius shed light on the wider question of colonialism; how did the abolition of slavery affect Mauritian society and, finally, how did the state-sanctioned indenture migration policy reshape Mauritian society?

Straddling an important and turbulent period in the colony’s history, this thesis will contribute to the scholarship of the administration of justice in Mauritius in the first half of the nineteenth century. The courts and the rule of law were powerful tools at the centre of British colonial enterprise and as such will form the anchor point for this thesis. The courtroom served as a political stage, often keeping social discourses in the public sphere. Its decisions legitimised power.

⁸ Megan Vaughan, *Creating the Creole Island: slavery in eighteenth-century Mauritius*, Duke University Press, Durham, 2005, p. 260.

Through cross-cultural connections between European, African and Asian peoples operating within the Indian Ocean World, this tiny island came to reflect, in microcosm, French and British imperial, colonial and ideological battles. This thesis will argue that in the first half of the nineteenth century the continual political and legal machinations, in a quest for judicial and political power, made the colony of Mauritius an important testing ground for many of these battles. Ann Laura Stoler suggests that in colonial societies ‘the relations of power were knotted and tightened, tangled and undone.’⁹ The experiences within Mauritian society also represent entanglements between the coloniser and the colonised, between the various colonial institutions, including the courts, between imperial rule and local colonial governance and between colonial actors’ public experiences and personal intimacies – all at various times tangled and detangled in the web of empire. When it came to imperial troubles, Mauritius might be regarded as being positioned in ‘the eye of the storm’.

A Brief History of Mauritius

To understand how Mauritius became caught in the web of European empire building it is important to give a brief account of the island’s geographical position and history. Mauritius is part of the Mascarene group of islands (Mauritius, Réunion and Rodrigues) located in the Indian Ocean, east of Madagascar and 2,000 kilometres off the coast of the African continent. With a landmass of only 2,040 square kilometres, it is relatively small.¹⁰ It is its geographical position and climate, rather than its size,

⁹ Ann Laura Stoler, *Along the Archival Grain: epistemic anxieties and colonial common sense*, Princeton University Press, Princeton, 2009, p. 237.

¹⁰ Apart from Mauritius, this landmass also includes Rodrigues, Agaléga, Cargados and Saint Brendon (Carajos Shoals).

which made Mauritius politically, economically and strategically important to European colonisers, particularly during the eighteenth and nineteenth centuries.

Mauritius has no known recorded indigenous population. Consequently, the colony was and modern Mauritius is a product of colonialism. The initial inhabitants arrived either by design or misfortune to this initially Dutch (1598–1710), later French (1715–1810) and finally British (1810–1968) colony – as sailors, settlers, slaves, soldiers, convicts or indentured workers. These ‘introduced’ Mauritian inhabitants spoke multiple languages, ate and prepared a variety of foods and adhered to many religions including pagan, Muslim, Hindu and Christian beliefs.¹¹

Arab sailors and merchants and possibly other regional ancient navigators were some of the earliest visitors to Mauritius. The Arabs named it *Dina Arobi*.¹² Early in the sixteenth century (1507) Portuguese explorers charted and mapped the island, calling it *Cirné*.¹³ The Dutch claimed it in 1598 and named Mauritius after Prince Maurice of Nassau (Holland’s *stadthouder*). The Dutch inhabited the island from 1638. The Dutch East India Company (VOC) soon realised its potential as a refuge against inclement weather and as a replenishing and repair station for passing Dutch ships.¹⁴

¹¹ John, Addison and K. Hazareesingh, *New History of Mauritius*, rev. edn., Macmillan Publishers, London, 1984, pp. 78–82.

¹² *Dina Arobi* is an Arab name meaning abandoned island.

¹³ The name *Cirné* was possibly inspired by a Portuguese ship named *Syrne*. Sydney Selvon, *A New Comprehensive History of Mauritius: from the beginning to this day, vol. 1: from ancient times to the birth of parliament*, Selvon, Mauritius, 2012, p. 25.

¹⁴ The first Mauritian connection with Tasmania came in September 1642 when Abel Tasman spent a few weeks at the Dutch outpost before leaving the island. In November of that year Tasman and his crew made the first known sighting of Tasmania, the island which today bears his name. Edward Duyker, ed., ‘Mauritius to 1810’ in *Mauritian Heritage: an anthology of the Lionnet, Commins and related families*, Australian Mauritian Research Group, Ferntree Gully, Victoria, 1986, pp. 1–2; Edward Duyker, *Of the Star and the Key: Mauritius, Mauritians and Australia*, Australian Mauritian Research Group, Sylvania, New South Wales, 1988, p. 6. VOC stands for Vereenigde Oost-Indische Compagnie.

Early Dutch settlement was fraught with difficulty. Cyclonic weather patterns regularly buffeted the shoreline, hampering development.¹⁵ A constant shortage of slave labour, mostly sourced from East Africa and Madagascar, and replenished with convict labour from Batavia, made progress slow.¹⁶ These slaves and convicts routinely escaped into dense forest, and violent attacks on the settlement were a recurring problem.¹⁷ In 1908 Sir Charles Bruce suggested that, from the onset, the multi-ethnic inhabitants of Mauritius joined in ‘hostility to European civilisation’.¹⁸ After two unsuccessful attempts at creating a settlement, the Dutch finally departed in 1710.

The Dutch legacy was their predatory mentality. In ‘*actes de vandalisme*’ they denuded the island’s volcanic landscape of its most precious timbers, affecting fauna and flora which changed the delicate ecological balance forever.¹⁹ They also brought with them livestock and unintentionally introduced rodents, which had a serious detrimental effect on the environment.²⁰ Depleted resources and competition from introduced species (humans included) saw unique native species disappear, including the famous native bird the dodo, which was ‘eaten to extinction’ by the hungry Dutch.²¹

¹⁵ The Dutch grew crops such as rice, tobacco, indigo and sugarcane as well as vegetable crops and planted citrus trees.

¹⁶ Sir Charles Bruce, ‘The Evolution of the Crown Colony of Mauritius’, *Scottish Geographical Magazine*, vol. xxiv, 1908, p. 60.

¹⁷ Arson was a common form of attack by these runaway slaves and convicts, causing maximum destruction.

¹⁸ Bruce, ‘The Evolution of the Crown Colony of Mauritius’, p. 60.

¹⁹ Raymond D’Unienville, *L’Evolution Du Droit Civil A L’ile Maurice, (1721–1968)*, Best Graphics Ltd, Port Louis 1994, p. 1.

²⁰ Vaughan, *Creating the Creole Island*, p. 25.

²¹ Dodo (*Raphus Cucullatus*): The dodo, boiled, roasted or pickled proved a very useful source of protein for the human population trying to survive in the fledgling colony. David Quammen, *The Song of the Dodo: island biography in an age of extinctions*, Scribner, New York, 1996, pp. 261–274; and 268; Vaughan, *Creating the Creole Island*, p. 3.

The French ventured ashore in 1715, led by Guillaume Dufresne d'Arsel and claimed Mauritius as French territory. The new colony was named *Isle de France*. It came under the administration and the trading monopoly of the *Compagnie Française des Indes* when it received its charter in 1719. The French also recognised the value of Mauritius, both commercially and strategically against the British in India, and established a settlement in 1721. Within two years the French had introduced a political and a legal system.²² The island transferred from the *Compagnie Française des Indes* to the French crown in 1767.²³

The early years of French settlement encountered similar difficulties to those experienced by the Dutch. However, the arrival of the newly appointed governor Bertrand-François Mahé de La Bourdonnais in 1735 was to change the fortunes of the fledgling colony. During La Bourdonnais's 12-year tenure the colony prospered. The town of Port Louis (named after Louis XV) grew rapidly and established a flourishing shipbuilding industry.²⁴ The Dutch had used the harbour since 1638 but under French control it became the main administrative centre and fortification for the colony. The island also developed into an important strategic French outpost, a refreshment station for the French navy and commercial vessels and an *entrepôt* for passing trade. In the process it developed a considerable merchant fleet.

From the beginning of its colonial history, the prosperity of Mauritius was predicated on unfree labour. In a 50-year period from the mid-1730s, the number of slaves

²² A Provisional Council was established. This council was invested with executive, legislative and judicial powers. Bruce, 'The Evolution of the Crown Colony of Mauritius', p. 60.

²³ The transfer to the French crown on 14 July 1767 happened when the *Compagnie Française des Indes* went bankrupt. Richard Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, p. 11.

²⁴ Moonindra Varma, *The Making of Mauritius*, Editions Le Printemps, Vacoas, 2008, pp. 22–26.

increased from only a few hundred to almost 40,000.²⁵ A range of plantation crops were trialled with varying degrees of success using slave labour imported from the African and Asian continents.²⁶

When European hostilities between Britain and France spilled into the Indian Ocean, the British seized the French colony of *Isle de France* (1810). The island's geographical and strategic position, as had been the case for the French, became important to shore up British imperial possessions in the Indian Ocean.²⁷ The British gave the colony back its Dutch name. At the Treaty of Paris in 1814 Mauritius officially became part of the British Empire. In April 1840, Major Edward Archer wrote to the Secretary of State for the Colonies, Lord John Russell, emphasising the geo-strategic importance of Mauritius to the British, suggesting the island was 'the key to our Indian possessions' (2,500 miles from the Cape, 2,000 miles from Ceylon, 3,000 miles from New Holland (Australia) and 3,000 miles from Java Head).²⁸ The acquisition of deep and safe harbours was also strategically important to the way the British ran the Empire. After 1810, Port Louis became another important waypoint for the British in the Indian Ocean. This preoccupation with ports lead one historian to describe the British as 'kleptomaniacs for harbours'.²⁹

²⁵ Between 1735 and 1765 the Mauritian slave population increased by almost 30 per cent, from 52 to 80 per cent of the total population. Sydney Selvon, *A New Comprehensive History of Mauritius*, p. 135.

²⁶ Varma, *The Making of Mauritius*, pp. 25 and 28.

²⁷ Mauritius was especially valuable as a waypoint between India and the Cape Colony. French corsairs (pirates) had become a threat to British trading vessels and the British East India Company sustained heavy losses at the hands of these pirates based in Mauritius.

²⁸ Edward Archer compared Mauritius to Malta in the Mediterranean Sea in terms of strategic importance. NLA, MAUR 3, letter to Lord John Russell from Major Edward Archer, Apr. 1840 on the policy of permitting emigration from the continent of India to the Mauritius, p. 6.

²⁹ Bruce Collins, *War and Empire: the expansion of Britain, 1790-1830*, Routledge, Abingdon, 2010, p. 402.

After 1814, as an official ‘member’ of the wider British Empire, Mauritius became a crucial link in the imperial chain of ports, ‘people and paper’, politics and trade, culture and religion stretching from the Caribbean to Europe, across the Indian Ocean to the Australian penal colonies.³⁰ An official census taken in 1826 shows the population breakdown as 63, 000 slaves 14,000 Indians, Chinese and Mauritian born and 9,000 whites.³¹

The global importance of European colonialism in fashioning and shaping the modern world is difficult to underestimate. British and European colonisers saw themselves as ‘standard bearers of modernity and progress’, bringing civilisation to its colonised subjects and territories.³² Nineteenth-century Mauritius was at the centre of many of these important exchanges and decisions regarding ecological imperialism and unfree labour exploitation. The transnational relocation of people, plants and animals, knowledge about fauna and flora, cropping and climate as well as imperial ideologies, technology, legal traditions, labour systems and trade show the development of Mauritius. Experimentation with cash crops saw the colony at one point become one of the largest sugar exporters in the British Empire. This enterprise relied heavily on the mobility of human labour, both unfree and free, and the movement of people became the ‘life-blood’ of imperial expansion.³³ The justification for slavery and other coercive and economic labour systems which characterised European colonialism was

³⁰ Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town, 1820–1850*, Melbourne University Press, Melbourne, 2004, pp. 7 and 17.

³¹ TNA PRO CO 172.42, Baron d’Unienville, tableau de statistiques, tableau no. 6, footnote 26, in Clare Anderson, *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853*, Macmillan Press Limited, Houndsmills, 2000, p. 6.

³² Krishan Kumar, ‘Nation and Empire: English and British national identity in comparative perspective’, *Theory and Society*, vol. 29, no. 5, 2000, p. 591.

³³ Eilin Hordvik and Luke Clarke, Villains of Ceylon?: class, status, identity and migration in the Indian Ocean world, in A. Ariyaratne, Senaka Bandaranayake, Shiran Deraniyagala, N. Jayawikrama, Sirimal Ranawella and Roland Silva, eds, *Lipi Panasa, Felicitation Volume for Professor Vini Vitharana*, Godage, Colombo, 2015, p. 356.

also present in Mauritius. In the period covered by this thesis, ideological flashpoints regarding these labour systems occurred in the colony which, as Tony Ballantyne and Antoinette Burton stress, were ‘at the heart’ of modernity.³⁴

The new British-Mauritian administration held great fears for the social stability on the island and pragmatic and political considerations affecting law and order became essential. Michael Sturma argues that law is a ‘powerful political weapon, and notions of criminality may reveal much about the structure of social relations’.³⁵ This thesis is sympathetic to Sturma’s concept of ‘environmental determinants’ where crime cannot be seen in isolation but must be viewed within an immediate legal, political and economic context, as part of a broader spectrum of social processes.³⁶ In the Mauritian context this include geographic isolation, social alienation, free and unfree labour, economic policies and an altered demographic landscape with the introduction of Indian indentured labourers. These factors influenced the types of crimes committed as well as the responses by the Mauritian courts.

In the transition from one colonial ruler to another, legal tensions emerged, not only between the old French established elite and the new colonial ruler but also between the local British administration and the metropole. As Marina Carter points out, tensions arose because of a distinct ‘lack of a clear single-identity hegemony’ in Mauritius where French and British interests often collided, thwarted cooperation and

³⁴ Tony Ballantyne and Antoinette Burton, ‘Introduction’, in Tony Ballantyne and Antoinette Burton, eds, *Bodies in Contact: rethinking colonial encounters in world history*, Duke University Press, Durham, 2005, p. 1.

³⁵ Michael Sturma, *Vice in a Vicious Society: crime and convicts in mid-nineteenth century New South Wales*, University of Queensland Press, St Lucia, 1983, p. 5.

³⁶ Sturma, *Vice in a Vicious Society*, p. 6.

made co-existence complicated.³⁷ Changes within the legal system in Mauritius, to align French legal and administrative structures with British imperial practices and policies, therefore led to complex and at times hostile ideological battles which would last for decades. This thesis will examine in detail some of these legal changes. In the process it will explore the social, racial and gendered perspectives that shaped the operation of the courts in the first half of the nineteenth century.

Within a few years of annexation, Mauritius became part of the British Empire's intra-colonial convict transportation system. The island's convict flow, crossing imperial spaces, went in both directions; initially receiving convicts from India between 1815 and 1837 mostly to work on infrastructure programmes as the island's sugar industry expanded.³⁸ A few convicts in this cohort who re-offended while still under sentence to transportation in Mauritius were re-transported to the Australian penal colonies.³⁹ Others, including slaves, former slaves and indentured labourers who met the same fate, joined them.

Convict transportation was formally institutionalised as a method of social control and punishment with the introduction of the Transportation Act of 1718, although it had existed as a practice for over a hundred years prior to this.⁴⁰ Deeply embedded in law was the belief that transportation was an appropriate punishment for a broad range of

³⁷ Marina Carter, ed., 'Introduction', in *Colouring the Rainbow: Mauritian society in the making*, Centre for Research on Indian Ocean Societies, Port Louis, 1998, p. v.

³⁸ Clare Anderson, *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853*, Macmillan Press Limited, Houndsmills, 2000, p. 6.

³⁹ In the period 1815–1825 convicts were transported to Robben Island from the Cape Colony, the Seychelles, and Mauritius. Some Mauritian convicts were also transported to Robben Island between 1832 and 1835. A small number of these convicts were re-transported to the Australian penal colonies. Clare Anderson, *Subaltern Lives: biographies of colonialism in the Indian Ocean World*, Cambridge University Press, Cambridge, 2012, p. 1.

⁴⁰ Peter Rushton and Gwenda Morgan, *Banishment in the early Atlantic World: convicts, rebels and slaves*, Bloomsbury Publishing, London, 2013, pp. 119–121.

crimes. Having the authority to sentence a first-time offender to transportation gave judges an alternative to public hanging. In Mauritius, the need to assert authority by visibly defining colonial boundaries of permissible behaviour became a motivating factor for the new British administration to commence convict transportation to the Australian penal colonies.⁴¹

Modern studies of colonial penal policies need to include those who were convicted at the edge of the British Empire, in places such as Mauritius, who, through colonisation, became inextricably linked with British imperial transportation policies and whose voices have been drowned out by the overwhelming number of European convicts arriving in Australia during the convict era. Although the 136 Mauritian convicts represent a very small number of the overall convict population transported to the Australian penal colonies, they too became part of the shifting language of penal policy and help to illustrate this change.

The examination of convicts transported across and between colonies is part of a burgeoning field of studies linking the movement of convicts to other systems of forced labour migration.⁴² Surprisingly, given its position as an Indian Ocean hub of unfree labour, no comprehensive examination of the entire cohort of convicts

⁴¹ NAM, RA 278, letter from Acting Prosecutor General J. M. M. Virieux, to Colonial Secretary of Mauritius G. F. Dick, 3 Mar. 1825.

⁴² Emma Christopher and Hamish Maxwell-Stewart, 'Convict transportation in global context, c. 1700–88', in Alison Bashford and Stuart McIntyre, eds, *The Cambridge History of Australia*, vol. 1, Cambridge University Press, Cambridge, 2013, pp. 68–90; Cassandra Pybus, *Black Founders: the unknown story of Australia's first settlers*, University of New South Wales Press, Sydney, 2006; Ian Duffield, 'From Slave Colonies to Penal Colonies: the West Indian convict transportees to Australia', *Slavery and Abolition*, vol. 7, no. 1, 1986, pp. 25–45; Clare Anderson and Hamish Maxwell-Stewart, 'Convict labour and the Western Empires, 1415–1954', in Robert Aldrich and Kirsten McKenzie, eds, *Routledge History of Western Empires*, Routledge, New York, 2014, pp. 102–117; Clare Anderson, 'Unfree Labour and its discontents: transportation from Mauritius to Australia, 1825–1845', *Australian Studies*, vol. 13, no.1, 1998, pp. 116–133; Anderson, *Convicts in the Indian Ocean*; Anderson, *Subaltern Lives*.

transported from Mauritius to the Australian penal colonies exists. This thesis seeks to fill this gap in the historical literature and build on previously established historical narratives by engaging with this cohort of convicts and position their experiences within a social, cultural, economic and political context of a colonial society in transition. Much of Clare Anderson's work uses detailed reconstructions of the lives of subalterns to explore the institutions with which they interact, be they courts, labour systems or penal transportation flows, as a set of integrated institutional practices.⁴³ Following Anderson's lead, through the stories of this cohort of convicts, this thesis will demonstrate how historical events and dramatic social and political transitions served to define the judicial and administrative features of Mauritian colonial society in the first half of the nineteenth century.

As a colonial society in transition, it is important to recognise how the gendered experiences and responses informed social processes. Gender and feminist historians have placed gender squarely at the centre of their critical analysis of empire, and have explored innovative and increasingly transnational approaches to gender history.⁴⁴ This important scholarly work has sought to redress not only the 'invisibility' of women in historical discourse, but also add new dimensions to the debate about the role of gender within imperial structures. As Joan Scott and others have reiterated,

⁴³ Clare Anderson, 'The Politics of Punishment in Colonial Mauritius, 1766–1887', *Cultural and Social History*, vol. 5, no. 4, 2008, pp. 411–422; Clare Anderson, 'Introduction to Marginal Centres: writing life histories in the Indian Ocean World', *Journal of Social History*, vol. 42, no. 2, 2011, pp. 335–344, Anderson, *Subaltern Lives*.

⁴⁴ Angela Woollacott, *Gender and Empire*, Palgrave Macmillan, Houndsmills, 2006; Philippa Levine, ed., *Gender and Empire*, Oxford University Press, Oxford, 2004; Ann Laura Stoler, 'Carnal Knowledge and Imperial Power, gender, race and morality in colonial Asia', in, Roger Lancaster and Micaela di Leonardo, eds, *The Gender/Sexuality Reader, culture, history, political economy*, Routledge, New York, 1997, pp. 13–36.

gender studies should not be seen as ‘an isolated aspect of society but as an integral part of it.’⁴⁵

Gender identities became ‘one axis through which colonial regimes established their legitimacy and through which colonized subjects accommodated new realities, forged new cultural practices and resisted the subordination of colonialism’.⁴⁶ In the Mauritian context this dimension needs to be extended to overlap with ‘intersectionality’ which, according to Jennifer Nash, ‘seeks to demonstrate the racial variation(s) within gender and the gendered variation(s) within race through its attention to subjects whose identities contest race-or-gender categorizations’.⁴⁷ Defining the hierarchical boundaries of masculinity and femininity, race and racial identity therefore played an important role in the formation of gender in colonial societies such as Mauritius. Attaching the social experiences of these convicts to a broader set of social relationships bring together concepts such as identity formation, gendered agency, strategies and normative behaviour. Further, a growing body of scholarship indicates how intimate relations of empire intertwined with, and indeed could direct colonial polity and legal outcomes. Intimate, mixed and often violent colonial relations would become, as Stoler has maintained, formative in the ‘making of racial categories and in the management of imperial rule’.⁴⁸

⁴⁵ Jill Conway, Susan Bourque and Joan Scott, ‘Introduction: the concept of gender’, in Jill Conway, Susan Bourque and Joan Scott, eds, *Learning about Women, gender politics, and power*, University of Michigan Press, Ann Arbor, 1989, p. xxiv.

⁴⁶ Woollacott, *Gender and Empire*, p. 81.

⁴⁷ Jennifer Nash, ‘Re-thinking intersectionality’, *Feminist Review*, no. 89, 2008, pp. 2–3.

⁴⁸ Ann Laura Stoler, ‘Tense and tender ties: the politics of comparison in North American history and (post)colonial studies’, *Journal of American History*, vol. 88, no. 3, 2001, p. 830.

The law often reinforced imperial conventional notions of femininity and masculinity and issues of gender were frequently at the heart of legal decision-making. This thesis will explore how the concept of gender and crime and punishment converged to formulate and impose gendered attitudes to crimes perpetrated by men and women in a colonial context. This thesis demonstrates that, in Mauritius, European, imperial, patriarchal and legally constructed arguments were transferred and mapped onto colonised bodies.

Many scholars have contributed to Mauritian historiography both before and after British annexation of this former Dutch and French colony. This thesis draws on the established scholarship of historians such as Auguste Toussaint, Patrick Barnwell, Moses Nwulia, Hugh Tinker, Vijayalakshmi Teelock, Marina Carter and Richard Allen. Other historians such as Clare Anderson, Edward Duyker, Cassandra Pybus, James Bradley and Deborah Oxley have all engaged with the Mauritian trial records. At various points over the past three decades they have used selected ‘members’ of this cohort of Mauritian convicts to illustrate British imperial, penal and labour policies and practices. This thesis provides an opportunity to continue their research, highlighting the ethnic and national diversity among the convicts transported to the Australian penal colonies. Drilling deep into these archival sources, my research will reveal some of the legal, social, economic and political factors that resulted in the Mauritian convicts’ sentences to transportation.

Edward Duyker’s book, *Of the Star and the Key: Mauritius, Mauritians and Australia* (1988) gives a short overview of convicts transported from Mauritius to the Australian penal colonies but does not attempt to situate transportation in an immediate Mauritian

context.⁴⁹ Duyker maps the relationship between the Australian colonies through trade, in particular sugar, shared colonial administrators and other imperial staff and ecclesiastical connections. He also tells the story of Mauritian migrants settling in the Australian colonies in the second half of the nineteenth century. Duyker's generous donation of his research notes for this book to the National Library of Australia (NLA) in Canberra became an excellent starting point in the search for the cohort of convicts eventually compiled for this thesis. Marie Jones's book, *From Places Now Forgotten: an index of convicts whose places of trial were outside the UK and Ireland* was another valuable reference point in the search for transported Mauritian convicts.⁵⁰

Clare Anderson has contributed greatly to the broader Indian Ocean historical scholarship through the study of subaltern and marginalised people and their experiences within the Indian Ocean World in the nineteenth century. Her extensive and nuanced research in this field has provided much in the way of contextualisation to advance our understanding of Mauritian society. Anderson's important publication *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853* (2000) and her valuable recent book, *Subaltern Lives: biographies of colonialism in the Indian Ocean World 1790–1920* (2012) highlight the diverse life-stories of transported convicts and the intra-colonial circulation of convicts within the British Empire.⁵¹ Unlike *Subaltern Lives* this thesis has one geographical hub, Mauritius. It will extend Anderson's research of the Mauritian transportees to incorporate the whole

⁴⁹ Edward Duyker, *Of the Star and the Key*, 1988.

⁵⁰ Marie Jones, *From Places Now Forgotten: an index of convicts whose places of trial were outside the UK and Ireland*, rev. edn., published by Marie Jones, Cardiff, New South Wales, 2005. Jones's index also includes the soldiers and sailors transported from Mauritius to the Australian penal colonies.

⁵¹ Anderson, *Convicts in the Indian Ocean*; Anderson, *Subaltern Lives*.

cohort transported from Mauritius to New South Wales and Van Diemen's Land between 1825 and 1845.

Richard Allen's groundbreaking work in *Slaves, Freedmen, and Indentured Labourers in Colonial Mauritius* (1999) considers the economic and social history of Mauritius during the French and British colonial periods, up until the early twentieth century.⁵² Allen's main focus is the development of Mauritius as a prominent sugar-producing colony and the island's capital formation. He examines the various labour systems and the island's shifting economic landscape conditioned by world markets as well as the consequences of local labour politics. Drawing on Allen's research, this thesis will show how the interaction between administrative and economic labour structures within the colony reflected the criminal offences recorded in the Mauritian courts.

In *Creating the Creole Island: slavery in eighteenth-century Mauritius* (2005), Megan Vaughan has mapped the French-Mauritian colonial history in the eighteenth century through court records and other supporting historical documentation.⁵³ Vaughan's extensive analysis and vivid narratives of life in this creolised slave society prior to British annexation sets the scene and foregrounds many of the colonial processes which occupied Mauritians in the first half of the nineteenth century. These include the law, slavery and abolition, which are important themes in this thesis.

⁵² Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*. In his latest publication *European Slave Trading in the Indian Ocean, 1500-1850*, Allen has an in-depth quantitative look at the slave trading activities of European powers within the Indian Ocean littoral, connecting this truly global trade to other forms of unfree and free labour systems to broaden the understanding of the movement of people within the colonial empires around the world. Richard Allen, *European Slave Trading in the Indian Ocean, 1500-1850*, Ohio University Press, Athens, 2014.

⁵³ Vaughan, *Creating the Creole Island*.

Offering much needed attention to intra-colonial transportation, in the 1970s and 1980s South African historians Leslie C. Duly and V. Candy Malherbe both flagged the practice of transporting black convicts from the Cape to the Australian penal colonies. Malherbe and Duly trace the changes within the legal system in the Cape, illuminating the causes, the efficacy and the apparatus of penal policy as well as the transportation of convicted Khoisan people to the Australian penal colonies between 1828 and 1842.⁵⁴ The newly formed Supreme Court embraced ‘transportation as a major deterrent to prevent the colony’s non-Europeans from committing petty crimes against person and property’ and used Robben Island as a ‘holding cell’ for convicts sentenced to transportation to the Australian penal colonies.⁵⁵ Although the previous imperial ruler and legal system in the Cape Colony had been Dutch and Mauritius had formerly been under French rule, both colonies experienced the gradual, sometimes challenging mixing of European legal traditions and illustrate the British Empire’s administration of justice in many of its colonial possessions in the first half of the nineteenth century.

Although representing no more than three percent of the entire convict population transported to the Australian penal colonies in the first half of the nineteenth century, the absence of scholarly research into convicts tried in places outside the British Isles needs to be redressed in order to enhance the understanding of how and why the British Empire used convict transportation between colonial possessions.⁵⁶ This thesis broadens Duly and Malherbe’s research to incorporate the Mauritian cohort of mostly

⁵⁴ V. Candy Malherbe, ‘Khoikhoi and the Question of Convict transportation from the Cape Colony, 1820-1842’, *South African Historical Journal*, vol. 17, no. 1, 1985, pp. 19–39; Leslie C. Duly, ‘“Hottentots to Hobart and Sydney”’: the Cape Supreme Court’s use of transportation, 1828–1838’, *Australian Journal of Politics and History*, vol. 25, no. 1, 1979, p. 48

⁵⁵ Duly, ‘“Hottentots to Hobart and Sydney”’, p. 44.

⁵⁶ Duly, ‘“Hottentots to Hobart and Sydney”’, p. 37.

non-European transportees from the British Indian Ocean colonies to the Australian penal colonies.

Extending Duly and Malherbe's field of research, Ian Duffield questioned the rationale behind the British colonial administrators' decision to transport convicts from the sugar colonies in the West Indies to Australia.⁵⁷ In his article, 'From Slave Colonies to Penal Colonies: the West Indian convict transportees to Australia', he asked why slaves and apprentices, being a valuable labour commodity, were sent as convicts to Australia, particularly given the number of convicts was not large enough to fill a gap in Australia's labour market. Duffield concluded that transportation was a deterrent to control a large slave population and later apprentices.⁵⁸ This was also the case in Mauritius. Duffield's fine-grained historical micro-studies of convicts' experiences became a template for many of the stories told in this thesis.⁵⁹

Intra-colonial transportation flows, in particular the flow of convicts from the Caribbean to Australia, is the focus in Diana Paton's article, 'An "Injurious Population": Caribbean-Australian penal transportation and imperial radical politics'. Paton asserts that the short-lived convict transportation flow between the colonies in the Caribbean to Australia ended because of 'racial and spatial politics of empire'.⁶⁰ Her idea of racially influenced penal policies will be examined. This thesis will argue that while such policies existed, race was more fluid and transportation policies less

⁵⁷ Ian Duffield here refers to black convicts. Duffield, 'From Slave Colonies to Penal Colonies', p. 25.

⁵⁸ Duffield, 'From Slave Colonies to Penal Colonies': p. 26.

⁵⁹ In particular Ian Duffield's 'Daylight on Convict Lived Experiences: the history of a pious Negro servant', in Peter Chapman, Richard Ely and Hamish Maxwell-Stewart, eds, 'Exiles of Empire: convict experience and penal policy 1788–1852' *Tasmanian Historical Studies*, Special Convict Issue, vol. 6, no. 2, 1999, pp. 29–62.

⁶⁰ Diana Paton, 'An "Injurious Population": Caribbean-Australian penal transportation and imperial racial politics', *Cultural and Social History*, vol. 5, no. 4, 2008, pp. 449 and 454.

uniform across colonial spaces. This is not a comparative study with other British sugar-producing slave colonies. However, throughout this thesis I refer to the experiences in the British Caribbean, a group of slave colonies with many parallels to Mauritius and under the same imperial ruler.

In the last three decades scholars have begun to study the entwined nature of gender identities and imperialism. Leading feminist scholars of gender in the British Empire such as Ann Laura Stoler, Philippa Levine, Angela Woollacott, Barbara Bush, Kathleen Wilson and Durba Ghosh have all made significant contributions to the study of British colonial history.⁶¹ The history of the British Empire and its interaction with indigenous colonised peoples and cultures is the dual focus of *Gender and Empire* (2004), edited by Levine.⁶² The contributors to this book argue that gender is an interactive social process. Woollacott's book on empire and gender casts a wide net, both geographically and thematically, incorporating national and transnational research between the eighteenth and the twentieth centuries. The wide reach of *Gender and Empire* (2006) serves to convey the multiple ways in which gender and empire coalesce.⁶³ This work has motivated me to examine the gendered dimensions of crime and the legal outcomes for these male and female convicts within differing phases of colonial Mauritius.

Cassandra Pybus and James Bradley's work include fine-grained studies of individuals' life trajectories. Pybus and Bradley explored in detail the divergent

⁶¹ Durba Ghosh, 'Gender and Colonialism: expansion or marginalization?', *The Historical Journal*, vol. 47, no. 3, 2004, pp. 737–755.

⁶² Philippa Levine, *Gender and Empire*, 2004.

⁶³ Angela Woollacott, *Gender and Empire*, 2006.

convict experiences of Mauritian child slaves Elisabeth Verloppe and Constance Couronne, aged 12 and eight respectively, when they were charged with attempted murder.⁶⁴ The two slave girls were found guilty and sentenced to transportation for life, arriving in the Australian penal colony of New South Wales in July 1834. Through this ‘boundary case’, Pybus and Bradley show how, in the colony of New South Wales, the two slave girls became a potent reminder of ‘the mesh of gender, race and punishment in colonial society’, a theme also explored in this thesis.⁶⁵

Turning to studies of law, Justice Alexander Wood Renton’s articles on French law under British rule initially guided me through the historical influence of French law and its ‘reception’ into the jurisprudence of the British Empire.⁶⁶ Pierre Rosario Domingue’s article, ‘The Historical Development of the Mixed Legal System of Mauritius during the French and British Colonial Periods’, gives a comprehensive overview of the legal history of Mauritius, outlining the transitions and tentative mixing of two distinct legal traditions. The article offers context to the battles over legal principles that ensued after the annexation of Mauritius by the British and

⁶⁴ James Bradley and Cassandra Pybus, ‘From Slavery to Servitude: the Australian exile of Elizabeth and Constance’, *Journal of Australian Colonial History*, vol. 7, 2007, pp. 29–50. See also Cassandra Pybus, ‘Children in Bondage: Elisabeth Verloppe and Constance Couronne’, in Lucy Frost and Colette McAlpine, eds, *From the Edges of the Empire: convict women from beyond the British Isles*, Convict Women’s Press, Hobart, 2015, pp. 61–76; Cassandra Pybus, ‘A Touch of the Tar: African settlers in colonial Australia and the implications for issues of aboriginality’, in *London Papers in Australian Studies* no. 3, Menzies Centre for Australian Studies, 2001, pp. 12–13; James Bradley, ‘The Colonel and the Slave Girls: life writing and the logic of History in 1830s Sydney’, *Journal of Social History*, vol. 45, no. 2, 2011, pp. 416–435.

⁶⁵ Bradley and Pybus, ‘From Slavery to Servitude’ p. 50.

⁶⁶ Although appearing in the *Journal of the Society of Comparative Law* (1909) more than one hundred years ago, these articles are still useful when studying the history of the Mauritian legal system. Alexander Wood Renton, ‘French Law within the British Empire: historical introduction’, *Journal of Society and Comparative Legislation, New Series*, vol. 10, no. 1, 1909, pp. 93–119; Alexander Wood Renton ‘French Law within the British Empire III: points of departure’, *Journal of Society and Comparative Legislation, New Series*, vol. 10, no. 2, 1909, pp. 250–260.

provides excellent background material for this thesis.⁶⁷ Vernon Palmer's instructive book on the *Mixed Jurisdictions Worldwide: the third legal family* (2012) has been a useful tool in terms of setting the Mauritian legal history and its inclusion into the 'third legal family' into a global colonial perspective. Charting the many intellectual and legal battlefields won or lost on the colonial barricades of prejudices and passions and in the name of justice and progress, Palmer brings the legal systems which emerged as a result of European colonial ambition and empire building together as one big family.⁶⁸

Diana Paton's book *No Bond but the Law: race and gender in Jamaican state formation, 1780–1870* (2004) has been a welcome and valuable contribution to the interpretation and administration of law in the British Caribbean slave colony of Jamaica in the first half of the nineteenth century.⁶⁹ Paton explores the correlation between punishment and state formation. The complicated administrative shift from private punitive measures to state sanctioned punishment of slaves and later apprentices brings into sharp relief imperial policies and punitive ideology. As in this thesis, Paton focuses on a single colonial island space and straddles the slave emancipation period within the British Empire. Paton reveals that, in the Jamaican experience during the post emancipation period of apprenticeship, the nominal freedom afforded slaves left them feeling as if little had changed and that freedom was only an elusive rhetorical reality. The same was true of the Mauritian slaves' experiences after 1835.

⁶⁷ Pierre Rosario Domingue, 'The Historical Development of the Mixed Legal System of Mauritius during the French and British Colonial Periods', *University of Mauritius Research Journal (Law, Management and Social Sciences)*, vol. 4, 2002, pp. 61–93.

⁶⁸ Vernon Palmer, *Mixed Jurisdictions Worldwide: the third legal family*, 2nd edn., Cambridge University Press, Cambridge, 2012.

⁶⁹ Diana Paton, *No Bond but the Law: punishment, race, and gender in Jamaican state formation, 1780–1870*, Duke University Press, Durham, 2004.

Marina Carter, in *Voices from Indenture: experiences of Indian migrants in the British Empire* (1996) and in *Servants, Sirdars and Settlers: Indians in Mauritius, 1834–1874* (1995) explored the role played by the Indian indentured diaspora in the evolution of the colonial society of Mauritius.⁷⁰ In terms of human diversity, influenced by labour systems, both free and unfree, Carter has suggested the Mauritian demographic layering was like ‘colouring the rainbow’.⁷¹ Several of her publications address this human layering and its influence on the development of Mauritian society. In a series of case studies, Carter also examined various aspects of Indian women’s lives in the colony. These case studies highlight these women’s contribution as colonial citizens and economic migrants and as contributors to the family’s financial wellbeing, as well as their roles as wives and mothers.⁷² During my research into the Indian diaspora in Mauritius, Carter’s body of work has been valuable in gaining an understanding of the Indian influence on Mauritian society.

Hugh Tinker has also explored many of the themes concerning the Indian diaspora in his book *A New System of Slavery: the export of Indian labour overseas 1830–1920* (1974). Tinker explores the processes of Indian labour migration to overseas destinations. His particular focus covers the Mauritian Indian immigration experience as this colony became the largest recipient of Indian indentured labourers and the ‘most Indianized’ of all the British Empire’s overseas possessions.⁷³

⁷⁰ Marina Carter, *Voices from Indenture: experiences of Indian migrants in the British Empire*, Leicester University Press, London, 1996; Marina Carter, *Servants, Sirdars and Settlers: Indians in Mauritius 1834–1874*, Oxford University Press, Delhi, 1995.

⁷¹ Carter, ed., *Colouring the Rainbow*.

⁷² Marina Carter, *Lakshmi’s Legacy: the testimonies of Indian women in 19th century Mauritius*, Editions de l’Océan Indien, Rose Hill, 1994. Other colonies which were part of the Indian indenture migration scheme were Trinidad, Guyana and Fiji.

⁷³ Hugh Tinker, *A New System of Slavery: the export of Indian labour overseas 1830–1920*, Oxford University Press, London, 1974, p. xiii.

Methodology

This thesis is chronologically organised and thematically structured, examining the development of penal policies, criminal justice and labour practices in Mauritius over time.⁷⁴ Primarily, this thesis has adopted a prosopographical research paradigm.

Prosopography refers to the study of ‘individual persons in a larger context’. This approach strives to examine ‘external features of individual lives’ and is a ‘systematic analysis of the biographical data of a select group of historical actors’.⁷⁵ This thesis will also engage with legal and social history and the history of institutions to investigate a range of historical, political, social and culturally specific dynamics of Mauritian society. The trial records from Mauritius and the trial summaries held in Australian archives and libraries pertaining to each member of the cohort form the main body of primary sources for this thesis.

This thesis will also embrace a recent trend within colonial historiography of considering colonialism more as a ‘cultural project’, rather than filtering it through economic and commercial paradigms.⁷⁶ However, the context in which economic and commercial decisions were made and the impact on colonial society needs to be acknowledged as an important aspect of a colonial ‘cultural project’. Within the webs of empire, Tony Ballantyne has highlighted three key elements with regard to this approach. Firstly the importance of ‘knowledge production in the construction of colonial difference and place’; secondly, to ‘underscore the centrality of cultural

⁷⁴ The themes in Chapters One and Two do however span the entire period under investigation in this thesis. Chapter One explores the legal system and Chapter Two examines the female convicts in the cohort.

⁷⁵ Koenraad Verboven, Myriam Carlier and Jan Dumolyn, ‘A Short Manual to the Art of Prosopography’, in K. S. B. Keats-Rohan, ed., *Prosopography Approaches and Applications, A Handbook*, Occasional Publications of the Unit for Prosopographical Research, Linacre College, Oxford, 2007, pp. 67 and 69.

⁷⁶ Tony Ballantyne, ‘The Changing Shape of the Modern British Empire and its historiography’, *The Historical Journal*, vol. 53, no. 2, 2010, p. 451.

difference ... that shaped imperial cultural formation' through gender and race in order to encode 'hierarchies of cultural value' and finally to appreciate the 'webbed or networked conceptions which imagine the empire as a set of shifting, uneven, and often unstable inter-regional and global connections'.⁷⁷ A 'key challenge' with regard to this approach is to 'recover the participation of various colonised groups', including non-European diasporic societies, 'in these webs and to remain sensitive to the occlusion and gaps within these patterns of exchange.'⁷⁸

Throughout the research for this thesis the 'exhumation' of and sifting through thousands of court documents in the various archives across three continents has been extensive. The National Archives in Coromandel, Mauritius, holds the full trial records of the vast majority of those transported from Mauritius to Australia. Further primary sources obtained include the trial summaries still in existence in the State Archives of Tasmania, the State Library of New South Wales, the State Archives of New South Wales and the National Library of Australia in Canberra. The National Archives in London also hold important documents pertaining to some of the trials in Mauritius. I then undertook the arduous task of digitising all available trial records and other related primary source material. The vast majority of these documents are in French. Hence, prior to commencing the interpretive process of the primary source material for this thesis, large tracts of these legal documents were translated from French to English by the author, a time consuming but important task.⁷⁹

⁷⁷ Ballantyne, 'The Changing Shape of the Modern British Empire and its historiography' p. 451.

⁷⁸ Ballantyne, 'The Changing Shape of the Modern British Empire and its historiography' p. 451.

⁷⁹ Working across two languages (neither of which are my native tongue) proved a challenging task and I have spent endless hours with all manner of linguistic tools in order to translate the sometimes very complicated nineteenth-century legal jargon.

The use of individual stories and biographical details as a methodological tool for historical analysis is important in this thesis. It uses a group of individuals with a number of common indicators or connections to illustrate broader issues related to Mauritius which in turn enhances the understanding and meaning of place and society. This prosopographical approach requires an ‘inductive method’, commencing with the data gleaned from primary sources pertaining to the individuals in the study to reach observable conclusions and ‘general phenomena’ with regard to Mauritian society and the criminal justice system.⁸⁰

The data sets derived from these sources will be analysed and extrapolated using a qualitative narrative approach to identify and illustrate trends and changes within the Mauritian legal system and society in the period under investigation. To follow the lives of these convicts after their arrival in Australia, as interesting as it may be, is not part of this thesis. The data only refer to a specific period, covering specific events in each person’s life. Therefore, a whole-life portrait (if such a thing is possible to compile) of these convicts is not included in this study. Rather, this thesis examines a 20-year period of Mauritian history, contextualised within the period of transportation from Mauritius to Australia between 1825 and 1845, a crucial period in the development of the colony.

Inclusion into this cohort of convicts draws on a series of record-linkages based on the Mauritian trial records. A set of biographical criteria has been created for each member of the cohort, such as name(s), age, gender, birthplace, ethnic background, social status, the owner (if a slave), type of employment, residence, personal associates

⁸⁰ Verboven, Carlier and Dumolyn, ‘A Short Manual to the Art of Prosopography’, p. 67.

and other associations. Other principal categories, such as sentences and prior convictions where known, the nature of the crime/s, when, where and against whom the crime/s were committed are also included, adding an additional layer of analysis.

A characteristic of British nineteenth-century imperial rule was the operation of a bureaucracy that was proficient by contemporary standards, churning out minutiae of colonial life through parliamentary papers, judicial correspondence, colonial office correspondence, private correspondence, ordinances, pamphlets and petitions as well as ships' records, colonial convict conduct records and musters. Collecting documentary fragments from all of these sources has yielded a large amount of historical information on Mauritian legal and administrative organisation as well as sketching a broader historical framework of the metropolitan and the colonial administrations' attitudes and ideologies. The contemporary British and Mauritian newsprint media provided further information to gauge how far flung colonies and the metropole engaged with issues of the day.

At times, scholars studying Mauritian colonial society have been accused of compartmentalising the island's history. It is easy to see why, when historical shifts and tensions, from slavery to emancipation, from freedom to indenture and the change in imperial rulers are so prominently defined and at times so dramatic. More than a decade ago Teelock urged scholars of Mauritian history to emphasise that 'there are no separate histories but only *shared* ones'.⁸¹ Nicole Ulrich has flagged similar concerns with regard to the history of the Cape Colony. Using an integrated approach she has

⁸¹ Vijayalakshmi Teelock, 'Breaking the Wall of Silence: slavery in Mauritian Historiography', *Radical History Review*, vol. 91, 2005, p. 108.

drawn together the various pieces of Cape history into a wider narrative and shown that it was possible to forge ‘social connections that transcended race, nation and ethnicity.’⁸² The temporal framework for this thesis only covers a short period in the development of Mauritian society and history. For ease of structure and practicality, I have ‘compartmentalised’ each chapter in this thesis. However, I do heed Teelock’s warning.

Historians using archival criminal justice records often encounter methodological stumbling blocks. Legal documents often reflect the ideology of the lawmakers, supported by the structural framework and power influences of the courts. To what extent does the relationship between the researcher and the sources influence bias, and how do we interpret official legal documents? Notwithstanding the wealth of information which exists within court records, there is a need to be mindful that these are often fragmented official records ‘from above’. Additionally, is it possible to develop multi-dimensional human actors from technical legal and often standardised documents? Throughout the research for this thesis, ascertaining how the law impacted on people’s individual and daily lives and discovering the authentic voices of the main actors in these trial records has been a challenge.⁸³

Reservations relating to the use of trial records lie in the inherently skewed power imbalance which existed between the accuser and the accused. For most of the convicts the justice system was alien. For example, these historical actors were

⁸² Nicole Ulrich, ‘International Radicalism, Local Solidarities: the 1797 British naval mutinies in Southern African waters’, in Clare Anderson, Niklas Frykman, Lex Heerma van Voss, and Markus Rediker, eds, *Mutiny and Maritime Radicalism in the Age of Revolution: a global survey*, The Press Syndicate of the University of Cambridge, Cambridge, 2013, p. 64.

⁸³ Vaughan, *Creating the Creole Island*, p. 82. Hamish Maxwell-Stewart and James Bradley, ‘Alexander and the Mother of Invention’, in Lucy Frost and Hamish Maxwell-Stewart, eds, *Chain Letters: narrating convict lives*, Melbourne University Press, Carlton, 2001, p. 195.

unfamiliar with the courtrooms, police stations, or other public spaces and were unable to verify the accuracy of the records generated by law clerks or the police due to illiteracy. Criminal cases using court interpreters relied heavily on the accuracy of their interpretations. In line with more recent critical approaches to legal studies, I have been cognisant of these power relations and the manner in which they shaped legal outcomes.

The existence of witness statements and statements by the accused are also valuable sources of information. However, the difficulty in interpreting the details woven into the texts in court documents is another hurdle for researchers. These snippets of information within statements, which Megan Vaughan calls ‘incidental asides and observations’, can often be as important to the understanding of the crime as the detailed ‘narrative of the alleged crime’ itself.⁸⁴ These narrative accounts, recorded before, during and after the trials frequently offer details about relationships, family situations and living arrangements, be it in the urban space of Port Louis; on one of the many sugar plantations; on small farms, or concerning those with no fixed abode. Other narrative details incorporated in court documents to consider are: why items were stolen, what kinds of items were stolen, and the relationship between the perpetrator(s) and the victim(s), to name only a few. As Anderson has suggested in *Subaltern Lives*, the convicts are at the centre of analysis, but the inclusion of other people in the ‘same frame’ and the interconnectedness between various marginalised people of empire will help open up a ‘kaleidoscopic view of their profound impact on colonial knowledge formation’.⁸⁵

⁸⁴ Vaughan, *Creating the Creole Island*, p. 82.

⁸⁵ Anderson, *Subaltern Lives*, p. 125.

Chapter Outlines

Chapter One will provide an overview of the mixed and hybrid European legal systems developed within the European colonial world. In particular, it traces the legal historical footprint in Mauritius and raises the question: to what degree was Mauritian legal history influenced by the French and the British legal systems? This chapter contains a contextual discussion of Mauritius as a legal space and the tensions associated with administering French criminal justice in a British colony. It sets out the criminal legal framework, which eventually underpinned colonial responses to crime and punishment in Mauritius in the first half of the nineteenth century.

Chapter Two will demonstrate how some colonial gendered perspectives and patterns of gender relations shaped the understanding of female criminal behaviour. To what extent did criminal law contribute to the notion of female criminality and the complex relationship between patterns of criminal behaviour and female lifecycle changes? This chapter will explore the intersection between judicial interpretations and individual histories as a way to understand and link gender, space and colonial society in the early nineteenth century. The plight of the children of transportees will also be discussed.

Chapter Three will examine how the debates that followed the introduction of the Slave Trade Act of 1807 in Mauritius became symptomatic of the ideological battles which came to characterise the relationship between the coloniser and the colonised. This chapter will also explore some of the ways in which the Mauritian Courts, interchanging slave and French penal codes, came to reflect changing attitudes to punishment. It will argue that the introduction of intra-colonial convict transportation

in slave societies such as Mauritius was an effective form of punishment and deterrent to crime, calculated to impact on a population that had a long history of engagement with dehumanising labour practices. Finally, this chapter studies the philosophical discourses and strategies by which pro-slavery advocates sought to appease metropolitan thought by offering ‘humane’ or ‘utopian’ style plantations, advocating the ‘uplift’ and civilisation of slaves.

Chapter Four will consider the intra-colonial convict transportation flows within the Indian Ocean and to Australia. This chapter will explore how a convicted felon’s status determined his or her penal destination. It will also discuss the legal consequences of slaves and free Mauritians becoming ‘partners in crime’. This chapter will argue that race was less important than economic and geographical factors in the decision to end some convict transportation flows between colonies throughout the empire. This chapter will also explore the reasons why convict transportation continued from Mauritius to Australia long after transporting convicts from the Caribbean colonies to Australia had ceased.

The abolition of slavery in 1835 changed the entire fabric of Mauritian society, although many legacies of slavery remained. **Chapter Five** will examine the responses to the apprenticeship system and the changed status of the emancipated slave population. This chapter will demonstrate how new labour legislation set in motion a social reorganisation which was accompanied by a myriad of oppressive measures. These measures had far-reaching consequences for the relationship between the new apprentices and their former masters and between the apprentices and the state.

In a set of complex integrated processes, following the abolition of the apprenticeship system in 1839, the cultural and political economy of Mauritian society was dramatically re-configured. **Chapter Six** will analyse the processes of redefining the status of the ex-apprenticed population and the fundamental principles of colonial power within this society in transition. Was there a correlation between social disruption following the end to the apprenticeship system and criminal behaviour? This chapter also explores the relationship between patterns of crime and the economic and social disadvantages as a result of the abolition of apprenticeship.

Chapter Seven will discuss the government-sponsored labour recruitment scheme of indentured workers from India to Mauritius which commenced in 1843, changing the island's history forever. More than a decade earlier, (1829) the Mauritian plantocracy had commenced the private recruitment of indentured labourers to replace the slave labour no longer available and to fill the labour vacuum envisaged by the inevitable abolition of slavery in the colony. This chapter will focus on the relationship between criminal offences and the introduction of this indentured Indian workforce. Key questions explored in this chapter include: did people convicted to transportation in the early 1840s reflect the dramatic demographic shift? What factors influenced the lateral violence occurring in the labour camps? Did the ratio-gendered character of the Indian indentured population impact on the types of crimes committed by those sentenced to transportation?

The law and the formation of legal systems are associated with national identity and deeply engrained in a nation's culture, heritage and language. Legal traditions are slow to develop, often influenced by the forces of history or, as was the case in Mauritius,

connected to specific historical events, social changes and transitions. The British annexation of Mauritius in 1810 and the mixing of two distinctive European legal traditions saw Mauritius become part of the British Empire's global web of justice and labour policies in the first half of the nineteenth century. This thesis will map how these changes played out within the legal system and at the level of the courtroom.

CHAPTER 1

The French Connection: legal imperialism in Mauritius



Figure 3 Illustration over map of Mauritius, Proclamation Declaration between Britain and France, 5 Dec. 1810: NLA, MAUR 1362, from the 'Le Merle Collection', Canberra, Australia.

The law of a conquered or ceded colony at the time of conquest or cession remains in force till it has been altered by competent legislative authority.¹

S'il est nécessaire d'avoir de bonne lois pour assurer à chaque citoyen ces droits, sa propriété et pour régler sa conduite, il ne l'est pas moins que ces lois soient généralement connues de tous ceux qu'elles lient et qu'elles obligent, parce que personne n'étant présumé les ignorer.²

¹ NLA, MAUREF 3, original draft of Capitulation Proclamation, 3 Dec. 1810; TNA, CO 167/4, original draft Agreement of Surrender of Mauritius to the British Empire, 3 Dec. 1810. *Code de Isle de France et de Bourbon*, Deuxième Edition par M. Delaleu, Conseiller au Conseil Supérieur de L'île de France et Procureur du Roi du Tribunal de la même Ile, au Port-Louis – Ile Maurice. In the National Archives of Mauritius there is an unsigned and uncertified copy of this document.

² NLA, MAUR 131, 'Avertissement' in *Code de Isle de France et de Bourbon*, deuxième édition par M. Delaleu, Conseiller au Conseil Supérieur de L'île de France et Procureur du Roi du Tribunal de la

Introduction

As competition between the European imperial nations increased throughout the eighteenth century, the need to access new territories in search of economic, strategic and military expansion grew. Colonial possessions not only became economically beneficial but in many cases politically and strategically advantageous.³ In 1810, during the Napoleonic wars, the then *Isle de France* was at the centre of a decisive naval battle between two imperial giants, France and Britain. Britain emerged victorious. The signing of a formal Capitulation Proclamation on 5 December 1810 had defining and far-reaching legal, political and social implications for the future of the colony.⁴ Mauritius, which had been pivotal to France's foothold in the Indian Ocean, was lost. With the struggle for power and supremacy in the region over, Britain was able to consolidate its control over vast areas of the Indian Ocean.

Article Eight of the Capitulation Proclamation gave generous concessions to the former French colony. It read, '*Que les habitants conserveront leurs Religion, Loix et*

même Ile, au Port-Louis – Ile Maurice, 1826, p. i. Translation: If it is necessary to have good laws to ensure each citizen his rights, properties and to regulate his conduct, it is all the more necessary that these laws be generally known by those whom they bind since no one is presumed ignorant of them.

³ Charles Fawcett, 'The Question of Colonies', *Geographical Review*, vol. 28, no. 2, 1938, p. 308. By adding this tiny island to its expanding global web of colonial territories, Britain strategically and commercially secured its position with regard to the Indian territories and trade in the Indian Ocean. The French possession of the Seychelles also became part of the Mauritian dependencies when ceded to Britain by the Treaty of Paris in 1814. From 1852 changes to some Mauritian laws were extended expressly or by implication to be incorporated into the legal coding of the dependency of the Seychelles. During the period under investigation in this thesis, minor criminal matters were dealt with in the Seychelles whereas more serious cases were heard at the Court of Assizes in Port Louis. Some of the convicts transported from Mauritius to Australia were originally from the Seychelles. Michael Bogdan, *The Law of Mauritius and Seychelles*, Juristforlaget, Lund, 1989, p. 17; Alexander Wood Renton, 'French Law within the British Empire: historical introduction', *Journal of Society and Comparative Legislation, New Series*, vol. 10, no. 1, 1909, p. 106.

⁴ Pierre Rosario Domingue, 'The Historical Development of the Mixed Legal System of Mauritius during the French and British Colonial Periods', *University of Mauritius Research Journal (Law, Management and Social Science)*, vol. 4, 2002, p. 65.

Coutumes.’ (‘The inhabitants shall preserve their Religion, Laws and Customs.’)⁵ The British also guaranteed the protection of private property. Those wanting to depart had two years to wrap up their affairs, gather their belongings and leave the island.⁶ The concessions offered by the British saw the French legal system already in place in Mauritius, incorporated in its entirety into the British Empire’s body of legal administrative governance in Mauritius. The Treaty of Paris Proclamation of 15 December 1814 formally ceded Mauritius to Britain. Notably, British law was never formally confirmed as an imperial statute in the colony. Consequently, French Law in Mauritius relied on the initial Capitulation Proclamation of 5 December 1810, leaving the French legal system and judiciary intact.

One of the legacies of colonialism in Mauritius is its inclusion into a third ‘legal family’.⁷ With common historical origins and circumstances of their birth, the members of this third ‘legal family’ are former colonial possessions which ultimately came into British or American hands, wrestled from other colonial powers such as France, Holland, Spain and Portugal through conquests, capitulations, treaties, sale or wars. In Mauritius, the legal duality of French civil law and English common law over time created a mixed legal jurisdiction which saw the French legal system established under French rule influenced by English common law. Esin Öricü explains that this cross-fertilisation created a mixed legal system which later became ‘points of

⁵ NLA, MAUREF 3; original draft copy to the Capitulation Proclamation, 3 Dec. 1810.

⁶ Samuel de Burgh-Edwardes, *The History of Mauritius, 1507-1915*, East and West Ltd, London, 1921, p. 53.

⁷ Today, this legacy forms the legal foundations in many counties around the world or operates as legal jurisdictions within larger political and legal frameworks. Some of the countries and territories are: South Africa, Sri Lanka, Botswana, Mauritius, the Seychelles, St Lucia, Quebec, Louisiana, Scotland, Malta, Porto Rico and the Philippines to name a few. Vernon Palmer, ‘Introduction to the mixed jurisdictions’, in Vernon Palmer, ed., *Mixed Jurisdictions Worldwide: the third legal family*, 2nd. edn., Cambridge University Press, Cambridge, 2012, pp. 3–7.

reconciliation’ and served as ‘models of the symbiosis of legal systems.’⁸ Initially, however, this tumultuous legal relationship was characterised by historical animosity, cultural clashes, and a vocal Franco-Mauritian colonial elite and legal fraternity. They argued that the preservation of laws and customs, as well as their historic and linguistic connection to France, was essential to the island’s identity.

This chapter will discuss the ‘export’ of European legal systems to colonial spaces. It will also explore the effect of these legal systems on acquired territories, even in places where one European legal system overlapped another, such as in Mauritius. How did the blend occur? Why did it occur and what was the effect? This chapter will investigate the legal tensions in Mauritius as a result of the retention of the French legal system under the Capitulation Proclamation, including the dispute over the language source used in the courts.

European Legal Systems in Colonial Spaces

The naval and commercial fleets of European nations became essential machinery in the engine rooms of trade and empire building.⁹ These ships also ‘exported’ their cultures and religions, their social and political beliefs and their laws.¹⁰ European legal systems, invariably introduced into acquired territories, served as instruments of power and left lasting legacies on regions subject to colonial rule. Each colonial conquest, based on the dichotomous principle of a superior European and inferior

⁸ Esin Örücü, ‘Introduction’, in Esin Örücü, ed., *Mixed Legal Systems at New Frontiers*, Wildy, Simmonds & Hill Publishing, London, 2010, p. 17.

⁹ Peter Linebaugh and Markus Rediker, *The Many-Headed Hydra: the hidden history of the revolutionary Atlantic*, Verso, London, 2000, pp. 145–154.

¹⁰ Francis Snyder and Douglas Hay, eds, *Labour, Law and Crime: an historical perspective*, Travistock Publication, London 1987, p. 12.

indigenous ‘legal culture’, helped the colonising nations to justify imposing their corpus of legislation and other institutions onto the conquered peoples.¹¹

How were these foreign legal cultures received in the colonies? John Schmidhauser suggests that imposing external legal systems in newly acquired colonial spaces was not a ‘benign’ intrusion and thus the idea of ‘voluntary reception’ must be regarded as dubious.¹² Vernon Palmer supports this view, explaining that these mixed jurisdictions were ‘never gratuitously or accidentally created.’¹³ In some colonies elements of laws were strategically imported.¹⁴ Many of these introduced European laws survived or morphed into a hybridised or mixed system and remained in use in the colonies long after European colonial powers either abandoned or revised their metropolitan laws. In other colonies a change of imperial master spelt the death knell of indigenous legal systems, leading to cultural stagnation and even contributing to cultural obliteration. This was especially the case in the Spanish colonial territories in Central and South America, where the Spanish rigorously enforced colonial law in land and resource acquisitions as well as using the law as a tool in labour exploitation.¹⁵ Continuities of law and governance therefore led to regional consolidation of valuable colonial territories and assets. Around the British Empire various indigenous and European legal systems converged and the application of law would expand and contract according to the legal reality of indigenous peoples and European masters.

¹¹ John Schmidhauser, ‘Legal Imperialism: its enduring impact on colonial and post-colonial judicial systems’, *International Political Science Review*, vol. 13, no. 3, 1992, p. 331.

¹² Schmidhauser, ‘Legal Imperialism’, pp. 321 and 332.

¹³ Palmer, ‘Introduction to the mixed jurisdictions’, p. 25.

¹⁴ Lauren Benton, *Law and Colonial Cultures: legal regimes in world history, 1400–1900*, Cambridge University Press, Cambridge, 2002, pp. 2–3; Anna Johnston, *The Paper War: morality, print culture, and power in colonial New South Wales*, University of Western Australia Publishing, Crawley, 2011, p. 185.

¹⁵ Within the Spanish colonial legal system was also the expectation of religious conversion. Secular law became the tool to enforce religious conversion on the colonised peoples. Schmidhauser, ‘Legal Imperialism’, pp. 331–332; Benton, *Law and Colonial Cultures*, pp. 5–6.

Following the Seven Year War between Britain and France, the French colony of New France (Quebec, part of modern Canada) was ceded to Britain at the Treaty of Paris in 1763.¹⁶ Legally, French customary law had governed the colony from the time of colonisation in 1534. From 1664, King Louis XIV decreed that the Custom of Paris should apply in the colony.¹⁷ Under British rule, English common law replaced the existing French laws. For the next decade confusion, opposition, non-cooperation and outright boycott of the British legal system were commonplace, the colonised preferring to settle legal matters and disputes according to French law.¹⁸ After years of fierce opposition, in a spectacular somersault, the Quebec Act of 1774 saw the reversal of the legal system in the colony, with French civil and commercial law reinstated.¹⁹ The Canadian experience is indicative of the push and pull of legal traditions and cultures. It also shows the difficulty of legal assimilation in colonial spaces and the problems faced by colonial administrations in enforcing foreign laws on new non-Anglophonic colonial subjects of European origin, in particular in previous French possessions.²⁰ The British would learn from this experience and take a more conciliatory approach in other colonial theatres across the globe.

The West Indian island of St Lucia was also a British acquisition under the Treaty of Paris in 1814.²¹ Layers of English common law were over time added to the pre-

¹⁶ The British annexed the colony of New France in 1759.

¹⁷ Sophie Morin, 'Quebec: "First Impressions Can be Misleading"' in Sue Farran, Esin Öricü and Seán Dolan, eds, *A Study of Mixed Legal Systems: endangered, entrenched or blended*, Ashgate Publishing Ltd, Surrey, 2014, p. 167.

¹⁸ Vernon Palmer, 'A Description and Comparative Overview', in Palmer, ed., *Mixed Jurisdictions Worldwide*, pp. 30–31; William Tetley, 'Mixed Jurisdictions: common law vs civil law (codified and uncoded)', pp. 12–13. <http://www.cisg.law.pace.edu/cisg/biblio/tetley.html>.

¹⁹ Sophie Morin, 'Quebec: "First Impressions Can be Misleading"', p. 168.

²⁰ The 1774 Quebec Act became a model for the British Empire in colonies with non-European populations. It was a different kind of empire to the early-eighteenth-century vision of white settler colonies.

²¹ At the Treaty of Paris in 1814, the tug of war over colonial territories saw St Lucia become one of the most fiercely contested colonial spaces between France and Britain. France claimed St Lucia in 1635

revolutionary French legal heritage and administration without the turmoil of the Quebec experience. The ‘anglicisation’ of the legal procedure, court structure and laws happened over time, introducing ordinances to incorporate common law principles to the island’s legal system, effectively grafting British common law onto French civil law.

The Treaty of Paris also confirmed British sovereignty over the French colony of the Seychelles, an archipelago of 115 small islands located in the Indian Ocean, northeast of Madagascar. During French and British occupation the Seychelles was a dependency of Mauritius, controlled remotely from the larger colony, in fact becoming a ‘colony of a colony’.²² Like Mauritius, the Seychelles had no indigenous population prior to colonisation and consequently no indigenous laws. The legal traditions and legal culture in the Seychelles therefore came to reflect the two European empires of France and Britain. In the Seychelles a Justice of the Peace, under the legal jurisdiction of the Mauritian courts, administered minor local legal matters. More serious criminal cases appeared before the courts in Port Louis. As in Mauritius, over time the transfer of French civil law and British common law into the fledgling colony saw the legal system undergo a form of creolisation by the mixing and overlap of the laws of these two legal traditions.²³

but it was not settled until 1643. In 1664 England claimed St Lucia. From then on ‘ownership’ changed several times until it was finally ceded in full right and sovereignty to Britain in 1814. Renton, ‘French Law within the British Empire’, pp. 104-105.

²² Mathilda Twomey, ‘Seychelles: “Things Fall Apart” – the mix of fate, free will and imposition in the laws of Seychelles’, in Sue Farran, Esin Özüçü and Seán Dolan, eds, *A Study of Mixed Legal Systems: endangered, entrenched or blended*, Ashgate Publishing Ltd, Surrey, 2014, p. 146. The Seychelles became a colony in its own right in 1903.

²³ Mathilda Twomey, ‘Seychelles: “Things Fall Apart”’, pp. 142-143.

An earlier British colonial acquisition was the island of Ceylon, modern day Sri Lanka. The initially Portuguese colonial possession had been in Dutch hands from 1600 until it was annexed by the British in 1796. Like the Dutch in Mauritius, the Portuguese left no legal trace.²⁴ Under Dutch colonisation the uncoded Dutch-Roman law gained a foothold and became the guiding legal principles for the colony's legal system.²⁵ The Dutch attempted to codify the various indigenous customary laws, but this proved a difficult task and over time Dutch-Roman law would override customary laws. A Charter of Justice, introduced in 1801, formally acknowledged the existing Dutch legal system, and included various indigenous laws.²⁶ The British judges who presided in the courts lacked knowledge of Dutch-Roman law and often sought refuge in English common law when administering justice in the colony. This shows the precariousness of legal systems and legal ideas as they developed in the various colonial spaces around the empire.

Another colonial acquisition wrestled from the Dutch by the British was the Cape Colony, which came under British sovereignty for the second time in 1806.²⁷ The influence of Calvinist religion, European language traditions and the Dutch-Roman legal system was evident in the former Dutch colony. The evolution of the colony's Dutch-Roman legal system under the new British sovereign saw English law

²⁴ The Portuguese did leave their mark on the population in the form of a strong catholic faith. Catholicism became the strongest Christian faith in this multi-ethnic and pluri-religious colony.

²⁵ The Dutch-Roman legal principles had their origin in the province of Holland and established within the context of a 'special *esprit* and style'. Palmer, 'Introduction to the mixed jurisdictions', p. 6.

²⁶ These laws included Kandyan Law, Tesawalamai Law, Muslim, Hindu and Buddhist laws, the latter three in particular with regard to property and religious property. Aquinas V. Tambimuttu, Sri Lanka: Legal Research and Legal System,

http://www.nyulawglobal.org/globalex/Sri_Lanka.htm#_2._Colonial_History.

²⁷ The first period of British colonisation of the Cape was from 1799 to 1803. Common law legal principles of the indigenous Khoisan population more or less ceased to exist after 1672. Kerry Ward, *Networks of Empire: forced migration in the Dutch East India Company*, Cambridge University Press, Cambridge, 2009, p. 297.

introduced in a ‘sectorial fashion’, gradually falling in line with English jurisprudence.²⁸ The courts in the Cape were receptive to this assimilation and in the second half of the nineteenth century English law did become more authoritative. This way of introducing English common law into colonial territories eventually resulted in the fusion of many of the modern mixed legal jurisdictions where cohabitation of two legal traditions merged through common historical events, legal institutions and approaches to law.

In colonial India, to reduce possible religious and cultural conflicts, the British retained some of the fundamental elements of Hindu and Islamic law, in particular the different cultural emphasis on race, caste and religion.²⁹ This was not an easy task, as indigenous beliefs and cultural understanding often clashed with those of India’s imperial master. As a result, under British rule a complex legal system developed reflecting ‘an amalgam of sedentary South Asian values and British priorities’.³⁰ At times the complexities of legal interrelationships would prove a challenge for both the local colonial British administrations and the metropole.

²⁸ Dutch legal practice varied from that of other European colonisers. In their colonial possessions the Dutch introduced a plural judicial administration with split tribunals for Europeans and the native population. Ward, *Networks of Empire*, p. 297; Palmer, ‘A Descriptive and Comparative Overview’, in Palmer, ed., *Mixed Jurisdictions Worldwide: the third legal family*, 2nd edn., Cambridge University Press, Cambridge, 2012, p. 26; Krystin Harman, *Aboriginal Convicts: Australian, Khoisan and Māori Exiles*, University of New South Wales Press, Sydney, 2012, p. 163; Michael Hooker, *Concise Legal History of South-East Asia*, Clarendon Press, Oxford, 1978, p. 187; Douglas Hay and Peter Craven, *Masters, Servants and Magistrates in Britain and the Empire: 1562–1955*, University of North Carolina Press, Chapel Hill, 2004, pp. 39–42; ; Leslie C. Duly, ‘“Hottentots to Hobart and Sydney”: the Cape Supreme Court’s use of transportation, 1828–1838’, *Australian Journal of Politics and History*, vol. 25, no. 1, 1979, pp. 39–50; V. Candy Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony 1820–1842’, *South African Historical Journal* vol. 17, no. 1, 1985, pp. 19–39.

²⁹ In some cultural matters, Islamic legal codes applied. An example of this was determining the ‘age of majority for marriage’. Hooker, *A Concise Legal History of South-East Asia*, p. 133.

³⁰ Sandria Freitag, ‘Crime in the Social Order of Colonial North India’, *Modern Asian Studies*, vol. 25, no. 2, 1991, p. 229.

Colonies such as Mauritius, the Seychelles, St Lucia, India, Ceylon and the Cape Colony became legal testing grounds or laboratories where colonial administrations experimented with various forms of authority and legal systems. This experimental approach saw Britain often keep elements of indigenous law, or retain an already hybridised indigenous/European adapted legal system. In Mauritius an entirely non-English but European legal codification was preserved. Where possible, English common law legal principles, key legal ideas and administrative regulations were applied to the local circumstances of indigenous, hybridised or mixed legal codes, generally relegating the existing system to a 'secondary status'.³¹ This ethnocentric approach to indigenous legal systems saw the British practice of accommodation usually lead to native laws eventually being absorbed into English legal practices through statute and case law.³² As British, French and Dutch colonial possessions in the Indian Ocean changed hands during the late eighteenth and early nineteenth centuries, the phenomenon of integrated, hybridised or mixed legal systems became an accepted practice. The practicalities of transplanting 'legal solutions' of English common law into the French legal civil codes in Mauritius would prove a bigger challenge than anticipated, mostly due to the strong French-Mauritian allegiance to its former imperial ruler, France.³³

³¹ Schmidhauser, 'Legal Imperialism', p. 332; Hooker, *A Concise Legal History of South-East Asia*, p. 2.

³² Hooker, *A Concise Legal History of South-East Asia*, pp. 5, 14 and 123.

³³ Bogdan, *The Law of Mauritius and Seychelles*, p. 11.

The French Legal System

The Romano-Germanic civil law tradition was the foundation for France's pre-revolutionary legal system.³⁴ The French Revolution's liberal creed and guiding legal principles of the *Déclaration des Droits de l'Homme et du Citoyens* of 26 August 1789 superseded the arbitrary authority of the monarchy and the accesses and abuses of the despotic and feudal *Ancien Régime* prior to 1789.³⁵ The *Déclaration* heralded the rights of the citizens, set out to protect society and marked the initial important step in the evolution of major penal reform.³⁶ In the spirit of the *Déclaration*, during the late eighteenth and early nineteenth centuries French legal theory swept through continental Europe, altering political and constitutional parameters. The promulgation of penal codes based on the French legal principles would become the cornerstone of many western legal traditions which in turn led to the redefinition of state power.³⁷

Within the new revolutionary penal code, the Romano-Germanic civil law tradition still provided the guiding principles. The principle of legality was the primary philosophy underpinning the *Code Pénal* of 25 September–6 October 1791. This new penal code represented a compromise between the idealistic optimism and realism of those defending the new social order. The dominant characteristic of the new French

³⁴ Many former French colonial possessions and European colonies in Latin America as well as countries in the Far East can trace the roots of their legal systems back to the Western European continental legal ideology and tradition. Bogdan, *The Law of Mauritius and Seychelles*, p. 9; Schmidhauser, 'Legal Imperialism', p. 322.

³⁵ On 7 August 1793 the *Assemblée Coloniale* also promulgated the Declaration of the Rights of Man and the Citizen. L. E. Venchard, 'Evolution du Droit Pénal Mauricien', in *Codes Annotés de L'île Maurice*, vol. 1, Edition Best Graphics, Port Louis, 1994, p. x; Leon Radzinowicz, *History of English Criminal Law and its Administration from 1750, vol. 1: the movement of reform*, Stevens & Sons Limited, London, 1948, p. 293.

³⁶ In France the Penal Code of 1791 was only in place for a relatively short period. It was abrogated in 1810. Radzinowicz, *History of English Criminal Law and its Administration from 1750*, p. 293.

³⁷ Marc Ancel, 'The Collection of European Penal Codes and the Study of Comparative Law', *University of Pennsylvania Law Review Codes*, vol. 106, no. 3, 1958, pp. 329, 348 and 350.

civil legal system was a ‘rigid legality’ with systematic codifications.³⁸ The new legal foundations were based on a hierarchical judiciary and a pre-trial inquisitorial investigation.³⁹ The enactment of *Le Droit Pénal de la Revolution Française* was a system of law constructed primarily on three fundamental principles: legality, moral responsibility, and condign punishment.⁴⁰

The main French penal reform, according to the principle of legality, had precise and simple definitions of criminal acts. Embedded in the code was the presumption of innocence until proven guilty. In its original form this implied that both the ‘action constituting the crime and the penal consequences of the action should be settled by statute’.⁴¹ This also gave the citizen an assurance that the imposed punishment corresponded with the offence.⁴² Among the most afflictive punishments were the death penalty and transportation.⁴³

³⁸ Radzinowicz, *History of English Criminal Law and its Administration from 1750*, p. 294.

³⁹ Robert, Philippe and Rene Levy, ‘A Changing Penal Economy in French Society: in search of a historical view’, *Historical Social Research*, vol. 1, no. 1, 1986, pp. 17–38.

⁴⁰ In many European legal systems the pivotal principle of legality was considered the cornerstone of Western legal traditions. The principle of ‘condign’ in this context describes a fair and fitting punishment. Ancel, ‘The Collection of European Penal Codes and the Study of Comparative Law’, p. 350; Radzinowicz, *History of English Criminal Law and its Administration from 1750*, p. 293.

⁴¹ Hans Thornstedt, ‘The Principle of Legality and Teleological Construction of Statutes in Criminal Law’, *Scandinavian Studies in Law*, vol. 4, 1960, pp. 209 and 214.

⁴² Another aspect integrated into the principle of legality was the notion that criminal law should not act retrospectively. George Bermann, and Etienne Picard, *Introduction to French Law*, Kluwer Law International, Alphen ann den Rijn (Netherlands), 2008, p. 107; Thornstedt, ‘The Principle of Legality and Teleological Construction of Statutes in Criminal Law’, pp. 209 and 214.

⁴³ Penal reform was extensive, with crimes attracting the death sentence reduced from 115 to 32. Title 1, articles 2 & 4 of the 1791 penal code saw the introduction of the guillotine as part a more humane method of inflicting the death penalty. The guillotine was never utilised in Mauritius. It was only on display as a deterrent. Other penalties were *la peine des fers* which was a heavy ball chained to a leg, often left on for several years and *la peine de la gêne* which constituted solitary confinement on bread and water. Bermann and Picard, *Introduction to French Law*, p. 107.

In the courts, the role of the judges was to determine the criminal act followed by a pre-set sanction.⁴⁴ The aim was to find the exact fixed penalty and impose it.⁴⁵ The disdain for judicial discretion made the inquisitorial legal system appear even more rigid and mechanical.⁴⁶ This often reduced the judges' ability to make the punishment fit the crime, as not even the most carefully drafted legislation can always foresee the multitude of scenarios which may arise in any given case.⁴⁷

Social reactions to crime also vary over time and from place to place. What constituted a crime, however, remained fixed. This ignored the fact that decisions in the two societies of France and Mauritius were influenced by different social, economic, political and cultural realities in each specific *endroit*.⁴⁸ What one or the other society perceived as dangerous did not remain fixed for all time. English common law ideals on the other hand incorporated judicial discretion and offered the judges more flexibility. The interpretation of legislative provisions could assist in the administration of justice, benefitting the individual as well as the state. Unlike the common law system, the judicial decisions in the courts under a French civil law jurisdiction had no bearing on future judgments. Only under very special

⁴⁴ Bogdan, *The Law of Mauritius and Seychelles*, p. 40; Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 69.

⁴⁵ In colonial societies, however, outside the courtrooms, judges were often at the centre of colonial government decision making. In the early 1850s administrative changes occurred relating to the legal profession in Mauritius. In 1852, a decision regarding the Rules of Court saw no person admitted as a barrister unless first having been admitted as a barrister or advocate to either the Queen's Superior Court in Britain or Ireland. Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 69.

⁴⁶ On the other hand, common law, with its origin in England, allows for a more creative role by the judges. Statutes also apply within common law but these are 'mainly for the purpose of codification of the judge-made law and for changing such judge-made rules that are not satisfactory from the point of view of the Legislator (usually the Parliament)'. Bogdan, *The Law of Mauritius and Seychelles*, p. 10; Radzinowicz, *History of English Criminal Law and its Administration from 1750*, p. 295.

⁴⁷ Radzinowicz, *History of English Criminal Law and its Administration from 1750*, p. 295.

⁴⁸ Morris Cohen, 'Aspects of Criminal Law', *The Yale Law Journal*, vol. 49, no. 6, 1940, p. 996.

circumstances was the principle of *circonstances atténuées* (extenuating circumstances) used.⁴⁹

The Napoleonic *Code Pénal* of 1810 restated many of the principles of strict interpretation. Some softening in the rigidity of the penal code of 1791, however, saw the reintroduction of some discretionary powers, fixed punishments substituted for ‘minima and maxima’ sentences and the reintroduction of the prerogative of mercy.⁵⁰ The new imperial penal code of 1810 came to reflect the new social order based on a hierarchy of wealth and property.

The French Legal System in Mauritius: Part of a ‘Third Legal Family’⁵¹

Within a couple of years of French settlement in Mauritius a court system known as *Conceil Provisoire* was put in place and enacted by an edict of 1723, incorporating criminal and civil jurisdiction.⁵² Over the next 75 years the legal administration of Mauritius underwent several changes. The news of the revolution in metropolitan France reached Mauritius in 1790. The new penal code of 1791 was exported to Mauritius and enacted on 7 August 1793.⁵³ The royal administration which had governed the island since becoming a crown colony was dismantled and an elected

⁴⁹ In common law, decisions made by the judges form the foundation of the legal system. Once a precedent has been set the court seeks guidance in other cases and not the statutes. The judges’ approach is ‘casuistic’ by finding similarities in other cases on which to make a decision. Bogdan, *The Law of Mauritius and Seychelles*, p. 10; Bermann and Picard, *Introduction to French Law*, p. 104.

⁵⁰ Jacques-Guy Petit, Nicole Castan, Claude F. Augeron, Michel Pierre and André Zysberg, *Histoires des Galère, Bagnes et Prisons XIIIe-XIXe siècle: introduction à l’histoire pénale de la France*, Bibliothèque Historique Privat, Toulouse, 1991, p. 119; Leon Radzinowicz, *Ideology and Crime: A study of crime in its social and historical context*, Heinemann Educational Books, London 1966, pp. 24–25.

⁵¹ Vernon Palmer, ‘Title’, *Mixed Jurisdictions Worldwide*.

⁵² The laws originally governing those of French origin in French colonial territories was the *Coutume de Paris* and the *Ordonnance de Colbert*. Domingue, ‘The Historical Development of the Mixed Legal System of Mauritius’, pp. 63 and 65.

⁵³ Domingue, ‘The Historical Development of the Mixed Legal System of Mauritius’ p. 64.

Assemblée Coloniale de l'Ile de France was established in August 1794, simultaneously promulgating the French *Déclaration des Droits de l'Homme et du Citoyens*.⁵⁴ These lofty ideals of human rights, however, only applied to the European population and others classed as free. In 1803 Emperor Napoleon dissolved the government institutions in Mauritius and installed a new imperial government which remained in place until British annexation in 1810. Napoleon's 'Consulat' (1799–1804) also abolished trial by jury (introduced during the French Revolution). Hence, at the end of the French Revolution, Mauritius still conducted criminal trials according to the revolutionary principles of 1791.

The lack of 'competing jurisdictions' in the late eighteenth century saw the French 'indigenous' penal code firmly embedded within the Mauritian justice system.⁵⁵ The status, authority and influence of an emerging legal profession came to parallel that of the legal fraternity in metropolitan France. In the 1770s, regulations regarding the legal profession tightened as the number of French-born barristers and attorneys increased.⁵⁶ An *Ordre du Barreau* was created in 1787. In 1804, the Chamber of Attorneys was established.⁵⁷ The chamber, dismantled in August 1837, removed a previous restriction on the number of practising barristers and solicitors in the colony.⁵⁸

⁵⁴ Lindsay Rivière, *Historical Dictionary of Mauritius: African Historical Dictionaries no. 34*, Scarecrow Press, London, 1982, pp. 50–51.

⁵⁵ Vaughan, *Creating the Creole Island*, p. 84.

⁵⁶ The 'notariat', a branch of the legal profession was established in Mauritius in 1823. Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 64.

⁵⁷ Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 64.

⁵⁸ The legal profession in European countries like France and Britain prospered in the early nineteenth century. Lawyers also looked to the colonies to expand their influence and increase their wealth by engaging in land litigation, land rights and criminal law. Christopher Bayly, *The Birth of the Modern World 1780–1914*, Blackwell Publishing, Malden, 2004, p. 145; Venchard, 'Evolution du Droit Pénal Mauricien', p. xii.

Following British annexation, the French legal segregation of the Mauritian population continued to be enforced. Legal considerations were not only complicated by the French-Mauritians' close ties with France, but the colour bar which existed in the colony.⁵⁹ For almost a quarter of a century the British administration's collaborative attitude would enforce the strict colour bar, with the population divided into white, *gens de colour* (mostly free) and slaves. *Code Noir*, which applied to the slave population, also pertained to the 'coloured' population. The legal position of the *gens de colour* was therefore an 'intermediate one' which included a mixture of slave and civil codes.⁶⁰ The legal framework and the subjection to different sets of law divided the Mauritian population into three categories: Europeans (mostly white and of French origin), non-European free ('coloureds'), and slaves (whether in servitude or emancipated.)⁶¹

Code Noir, introduced in the form of the edict of 1685, was promulgated in Mauritius through the Letters Patent of 1723. This penal code, initially introduced during the reign of Louis XIV, instructed slaves and masters in France's American possessions.⁶² The French slave code delineated religious instruction, baptism and a slave's legal status and confirmed a slave as 'moveable property'. It also regulated work, leisure and welfare including housing; food and clothing; marriage; the family unit and the separation of parents and children; corporal punishment for acts of violence by both slaves and masters; specified punishments for robberies of livestock and banned slaves from congregating. It also defined a master's compensation for the loss of a slave and

⁵⁹ Keith Hunt, *Sir Lowry Cole, Governor of Mauritius 1823–1828, Governor of the Cape of Good Hope, 1828–1833: a study in colonial administration*, Butterworth & Co (SA) Pty Ltd, London, 1974, p. 173.

⁶⁰ Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 63.

⁶¹ Domingue, 'The Historical Development of the Mixed Legal System of Mauritius', p. 63.

⁶² Renton, 'French Law within the British Empire', p. 104.

manumission. *Code Noir* clearly defined the private slave owners' religious and moral duties, perceived to be an integral part of the civilising process of the Mauritian slave population. As Megan Vaughan points out, however, the moral fibre and religious fervour of many slave owners left a lot to be desired and the law in this respect was hard to police, as were many of the other articles in the *Code Noir*, particularly in relation to the punishment of slaves.⁶³

In the criminal courts, a slave's status as a minor was replaced with that of a free person – imbued with full legal responsibility.⁶⁴ Article 25 of *Code Noir* stated that:

Slaves may be prosecuted criminally, without the necessity of rendering their masters parties to the action, except in a case of complicity, and Slaves shall be accused and judged in the first instance by the ordinary Judges, if any are to be found, and by appeal to the Council, according to the same mode of proceeding and the same formalities as in the case of free men.⁶⁵

When the British annexed Mauritius in December 1810, the revolutionary penal code of 1791, with strict definitions of criminality and fixed penalties, was in force in colony. In February of that year France had revoked the penal code of 1791 and replaced it with Napoleonic-inspired legal principles—*Code Pénal* of 1810.⁶⁶ This new penal code, not promulgated in Mauritius due to the British annexation, meant that the revolutionary penal code of 1791 stood.

⁶³ Vaughan, *Creating the Creole Island*, p. 162.

⁶⁴ Vaughan, *Creating the Creole Island*, p. 84.

⁶⁵ TNA PP. 1828. XXVI (526) Slaves in Mauritius (*Code Noir*), Letters Patent, Dec. 1723, return to an address of the honourable House of Commence, 24 Nov. 1826, p. 15; Marc Serge Rivière, *Code Noir et Autres Documents Concernant l'Esclavage*, Osman Publishing, Curepipe, 2009, p. 27.

⁶⁶ Venchard, 'Evolution du Droit Pénal Mauricien', p. xi.

For the British, the rule of law became ‘the motor for governing both locally and trans-imperially’.⁶⁷ The Commission of Eastern Inquiry’s appointment (October 1822-June 1828) to report on the general administration of the Indian Ocean colonies of Mauritius, the Cape Colony and Ceylon included the legislative amendments influencing the administration of justice. With regards to Mauritius the Commission recommended as early as 1826 that the laws should be brought ‘into a much closer resemblance to the law of England’ through the process of anglicisation of the Mauritian legal system. The recommendation also stated that this be done ‘in the same spirit of respect for the wishes of the inhabitants of French origin’.⁶⁸ Maintaining the French legal system in Mauritius after 1810, however, paradoxically saw the new colonial ruler having to fight to implement an English legal structure within the judiciary in the colony.⁶⁹ The new British administration’s goal was to anglicise the legal system, but politically this proved complicated as the French-Mauritian colonists lobbied hard to retain their legal heritage through the French language and the inquisitorial justice system.

The French Criminal Ordinance of 1670 had been the basis for all Mauritian criminal procedure prior to 1831, when a new *Code d’Instruction Criminelle*, based on Napoleon’s 1808 French code of the same name, was introduced.⁷⁰ The *Juge d’instruction* was in charge of the pre-trial process. He would seek evidence, interview complainants, suspects and witnesses and decide if sufficient evidence was available

⁶⁷ Anna Johnston, ‘Linguistics, Religion and Laws in Colonial New South Wales: Lancelot Threlkeld and settler-colonial humanitarian debates’, in Diane Kirkby, ed., *Past Law, Present Histories*, ANU E Press, 2012, p. 38.

⁶⁸ *Mauritian Government Gazette*, Extraordinary Government Notice sent out by G. F. Dick Colonial Secretary of Mauritius, Sep.10, 1833, from Viscount Goderich to William Nicolay. Disallowance of Ordinance 1 of 1832.

⁶⁹ Raymond D’Unienville, *L’Evolution Du Droit Civil A L’Ile Maurice, (1721–1968)*, Best Graphics Ltd, Port Louis, 1994, p. 18.

⁷⁰ Renton, ‘French Law within the British Empire’, p. 106.

to proceed to trial. If satisfied, he would prepare a *dossier* for the trial court.

Preliminary investigations established the nature and severity of the alleged offence.

The *Juge d’Instruction* would refer the cases deemed serious to the *Cour d’Assise* (Court of Assizes). Most of the accused in the cohort pertaining to this thesis were brought before the Court of Assizes.

The Court of Assizes in Mauritius sat four times per year. The bench was composed of the first president, who acted as presiding judge and directed proceedings, the vice president, the assistant judge and a deputy judge. Three assessors reviewed the cases. These assessors were drawn from a pool of elected citizens. Some were lawyers, others landowners, merchants or businessmen. A defendant, whether willing or unwilling was represented by a lawyer or barrister in the courtroom. If found guilty, the offence would be defined according to the penal code and a predetermined penalty given at the end of the trial proceedings.

Legal Tensions

During the first decades of British rule, the retention of the French legal system resulted in constant friction. The French-Mauritians would accuse the British of conspiring to substitute English for French judicial ideals. This became a thorny issue in the cases where the French inquisitorial system was presided over by British judges. Many British judges found it hard to perform their role in court, let alone adjust to and accept the inquisitorial legal processes. When presiding over criminal trials, some British judges would at times opportunistically and selectively gravitate towards and

refer to English case law.⁷¹ As Lauren Benton points out, there was ‘no imperial handbook about which forms of the law were best to institute first in a colonial setting’.⁷² The ‘jurisdictional jockeying’, not only legally but also politically, became a common facet of colonisation.⁷³

The incorporation of English legal principles was politically of great importance as, in conquered colonies such as Mauritius; criminal law reform was more than just an efficient instrument to control crime. An effective and multipurpose criminal code assisted in the maintenance of law and order, retained social stability and negated the need for an enlarged military force. Criminal law was also an opportunity to experiment with political configurations, create institutions, deliver ordinances and settle disputes as well as convict those who transgressed established legal boundaries.⁷⁴ In Mauritius, the criminal code and the rhetoric of law became the origin of political conflict, often masking cultural disparity and perceptions of rules and obligations.

At the Colonial Department in London, Secretary of State for Wars and the Colonies Viscount Robert Goderich (November 1830–April 1833) was in charge of communicating with Mauritius with regard to revisions to the existing penal code.⁷⁵ Goderich, a pro-abolitionist, was committed to the abolition of slavery in Mauritius which put him at loggerheads with the Mauritian planters from the beginning. The

⁷¹ Domingue, ‘The Historical Development of the Mixed Legal System of Mauritius’, p. 66.

⁷² Benton, *Law and Colonial Cultures*, p. 13.

⁷³ Benton, *Law and Colonial Cultures*, pp. 206 and 2-3.

⁷⁴ Paula Byrne, *Criminal Law and Colonial Subjects: New South Wales, 1810–1830*, Cambridge University Press, Cambridge, 2003, p. 7.

⁷⁵ Viscount Robert Goderich, Australian Dictionary of Biography, <http://adb.anu.edu.au/biography/goderich-first-viscount-2103>.

Colonial Office in London argued that the French *Code Pénal* of 1791 was outdated and too harsh, with little room for discretion. Additionally, British judges found it difficult to carry out justice in the courts under the existing code. In a dispatch dated 16 April 1831 to the governor of Mauritius, Charles Colville, Goderich clearly set out the aim of the British government: gradual assimilation of this former French colony to British values and traditions and eventual integration of the English legal system.⁷⁶ In an effort to appease the Franco-Mauritians, Goderich did acknowledge France's strong bond with Mauritius and that the Mauritian judiciary, at least in the short term, was not inclined to take any less notice of metropolitan Paris and more notice of London.

In 1832, the then home secretary, Robert Peel, who had been instrumental in modernising English criminal law, again stressed the importance of bringing the Mauritian penal code into line with the legal changes implemented in the metropole.⁷⁷ As Anna Johnson points out, however, the idea of a British unified legal system was just that, an idea.⁷⁸ The legal judiciary in the British colonies was a 'lot more complex and fluid state of affairs', a *mélange* of different traditions and cultures operating in various legal spaces throughout the Empire.⁷⁹

In line with Peel's recommendations, Goderich set about negotiating compatible amendments and provisional enactments to the Mauritian penal code. Governor

⁷⁶ TNA, CO 172/25 dispatch to Governor Charles Colville from the Secretary of State to the Colonies Viscount Robert Goderich, 16 Apr. 1831.

⁷⁷ Consolidation of the criminal legislation under Peel saw hundreds of archaic statutes repealed and offences that carried the death penalty reduced from 200 to 12.

⁷⁸ Johnston, *The Paper Wars*, p. 194.

⁷⁹ Johnston, *The Paper Wars*, p. 185.

Charles Colville was in charge of the arduous task of drafting the new code. An amended *Code Pénal* was adopted on 15 February 1832. Colville despatched the amended code to London for approval. To his exasperation, Goderich received what he considered a mere ‘transcript’ of the existing French penal code. By the time Goderich’s dispatch dated 15 March 1833 arrived in Mauritius, Colville had left his post as governor and the newly appointed governor, William Nicolay, was at the receiving end of Goderich’s disdain. He wrote:

I did not, indeed, doubt that the criminal code of France would be adopted as the basis for the proposed law, nor was I unwilling that the colonists should be gratified, even at the sacrifice of the opportunity thus afforded me of assimilating the laws of the colony to those of England – an object of great importance and of permanent interest.⁸⁰

The documents for ‘his Majesty’s approbation’ with the relevant amendments to the penal code was inconveniently and ‘with impropriety’ written in the ‘foreign tongue’ of French.⁸¹ Additionally, Goderich claimed the amended legislation was not far reaching enough and the laws had been ‘studiously altered at Mauritius precisely in those enactments which, if they had been retained, would have subjected the seditious in the colony to severe and all-merited penalties.’ It is clear from Goderich’s outburst that he did not take kindly to what looked like a ‘deceptive manoeuvre’ by the island’s legal fraternity. He exonerated Colville, the previous governor, believing he had been left in total ignorance of the ‘important interpolations introduced in the new code’. Goderich, at this point, less ‘respectful’ than had been suggested by the commissioners of Eastern Inquiry, had this to say about the French legal system in 1833:

⁸⁰ *Mauritian Government Gazette*, Extraordinary Government Notice sent out by G. F. Dick, Colonial Secretary of Mauritius, 10 Sep. 1833, from Viscount Goderich to William Nicolay.

⁸¹ *Mauritian Government Gazette*, Extraordinary Government Notice sent out by G. F. Dick, Colonial Secretary of Mauritius, 10 Sep. 1833, from Viscount Goderich to William Nicolay.

At the conquest of Mauritius, the ancient French Criminal law was found in force, the civil codes having been previously introduced. The old penal code was ill-digested and in truth wholly inapplicable to the existing circumstances of society, and at variance with the feelings and opinions of the present age.⁸²

Ordinance 1 of 1832, ‘putting into legal force and effect the new penal code for the Island of Mauritius and its dependencies’ was by official notification disallowed.⁸³ As a result, the revolutionary *Code Pénal* of 1791 (1793) was again the force of law in Mauritius.

The timing of this disallowance in 1833 is important. The debate over the abolition of slavery, which had been raging in the colony for some years, had reached fever pitch as legislation emancipating slaves throughout the British Empire had just been passed (28 August 1833 effective from 1 August 1834). The tensions on both sides of the legal and political divide in Mauritius were palpable. It is fair to say the influence of English law on French civil law originated in the harsh political landscape which preceded and followed the abolition of slavery.⁸⁴ The tug of war between the French and English legal systems became symptomatic of broader social, political and economic issues in the colony.

As the anti-slavery movement gathered momentum there were calls for compensation legislation to go through without indemnity to slave owners, increasing the

⁸² Goderich is here most likely referring to Mauritius being a slave colony and not in tune with the views held by Goderich himself and the anti-slavery movement.

⁸³ *Mauritian Government Gazette*, Extraordinary Government Notice sent out by G. F. Dick, Colonial Secretary of Mauritius, 10 Sep. 1833, from Viscount Goderich to William Nicolay.

⁸⁴ D’Unienville, *L’Evolution Du Droit Civil A L’ile Maurice*, pp. 21–23.

nervousness amongst the Mauritian planters. Adrien D'Epinay, a prominent planter, newspaper editor and member of a self-appointed Colonial Committee protecting the interests of Mauritian planters, was their leader and considered a dangerous adversary by the British.⁸⁵ Concerns that the Mauritian plantocracy would not be remunerated for the loss of their slaves saw him travel to London to discuss compensation with the British government.⁸⁶ He successfully obtained an assurance that compensation would be awarded to the Mauritian planters.

In 1832, the intervention of Thomas Buxton, a prominent British abolitionist, helped secure the appointment of John Jeremie as general prosecutor in Mauritius, replacing the local *Procureur Général* Prosper D'Epinay, brother of Adrien D'Epinay.⁸⁷ Jeremie was a former chief judge on the West Indian island of St Lucia and a member of the Anti-Slavery Society. Not surprisingly, his relationship with the St Lucian plantocracy had been fraught and his pro-abolitionist views preceded him to Mauritius. The publication of his *Four Essays on Slavery* was a fierce critique of the institution of slavery and those who wanted to retain and profit from it.⁸⁸

The appointment proved a disaster. Local interests appeared to collide head on with the abolitionist view of the newly appointed general prosecutor. The Mauritian plantocracy feared Jeremie was in the colony to thwart the compensation guarantees

⁸⁵ Adrien D'Epinay, *Souvenirs d'Adrien D'Epinay, 1794–1839: extraits relatif a sa seconde mission a Londres, en 1833(abolition de l'esclavage)*, publiés par son fils P. D'Epinay, Fontainebleau, 1901. The Slavery Compensation Commission (October 1833- 1842) was established to negotiate planters' compensation claim.

⁸⁶ John Addison and K. Hazareesingh, *New History of Mauritius*, rev. edn., Macmillan Publishers, London, 1984, pp. 45–49.

⁸⁷ Prosper D'Epinay was the general prosecutor during the time of many of the criminal cases used in this thesis.

⁸⁸ John Jeremie, *Four Essays on Colonial Slavery*, 2nd. edn., printed for J Hatchford & Son, Piccadilly, 1832.

obtained by Adrien D'Epinay in London the year before. With news of the abolitionist Jeremie's arrival in Port Louis, coupled with the hostile attitude towards His Majesty's government over the abolition issue, the French-Mauritians shut down the town of Port Louis. They also paralysed the courts and the public service. Despite Jeremie's protests that he did not intend to interfere with the compensation negotiations, his tenure only lasted a few weeks before Governor Colville sent him back to England. Jeremie complained bitterly about his treatment in the colony. Due to his inability to keep the peace in the colony, Colville himself resigned as governor on 3 February 1833. On 4 February 1833, Sir William Nicolay replaced Colville as governor of Mauritius.⁸⁹

The government in London was less than impressed with the actions of the Mauritians and Jeremie returned to his post in the colony, arriving on 30 April 1833. Adrien D'Epinay had by this time travelled to London for a second time to continue negotiations. Jeremie stayed in the colony for eighteen months until his position as general prosecutor became too controversial. During his second stint in the colony Jeremie tried to replace several sitting judges, accusing them of engaging in slavery. His overzealous pursuit and imprisonment of the Mauritian judges, in an effort to have them tried for treason, won him few friends. After several months of incarceration these prisoners were eventually released without charges being laid. Jeremie finally left the island on 28 October 1834.

⁸⁹ Patrick Barnwell and Auguste Toussaint, *A Short History of Mauritius*, Longmans, Green and Co, London, 1949, pp. 148–152.

The estimated worth of the slave population in Mauritius was around £4 million. The Mauritian planters negotiated a final settlement of £2 million (ten percent of the entire compensation fund) which saw the release of the Mauritian slave population on 1 February 1835. In 1837, some quarters of the British community were still seething over the amount of compensation received by the Mauritian planters. In a pamphlet addressing the electors of Cambridge and Devonport titled *The Mauritius, an Exemplification of Colonial Policy* (1837), the anonymous author directed a stinging attack at politicians on all sides of politics regarding the colonial policy in Mauritius.⁹⁰

The perceived collusion of successive British colonial administrations in Mauritius, the impotence of the metropole and the generous compensation package offered to Mauritius and other slave colonies for the loss of their slaves were still fresh in the minds of many Britons. The author directed his attack at the Colonial Office, stating that the enemies of the ‘Negroes’ are ‘all powerful in every political party – Tory, Whig, and Radical; and that in every change of Administration the Colonial Office has been filled with men attached to the interests of the Planters.’⁹¹ This, according to the author, had made the colonial office ‘set the British Law at defiance’.⁹²

The pamphlet’s closing paragraph was a scathing attack on the British government. It suggested the government had given in to the pressures of the Mauritian planters, who had successfully negotiated a handsome compensation package. Following the abolition of slavery the Mauritian slave owners were entitled to a ‘share of the National spoliation ... extorted from our own hard working population to reward

⁹⁰ NLA, MAUR 111, *The Mauritius, an Exemplification of Colonial Policy*, addressed to the electors of Cambridge and Devonport, Birmingham, 1837.

⁹¹ NLA, MAUR 111, *The Mauritius, an Exemplification of Colonial Policy*, p. 1, 1837.

⁹² NLA, MAUR 111, *The Mauritius, an Exemplification of Colonial Policy*, p. 5, 1837.

rebels, pirates, men-stealers.’ The inference that the British working class were the ‘victims’ of a regressive tax system which left them to foot the bill for the abolition of slavery was obvious. The author held neither the British politicians nor the Mauritian colonial administration and the planters in high regard. He concluded that, ‘[o]ur present Reformed Government may defy the history of any age or country to produce such another instance of shameless violation of every principle of Justice.’⁹³

Following the abolition of slavery in Mauritius the concerns about the severity of the *Code Pénal* of 1791 continued. In 1836 Governor Nicolay enacted Ordinance 10, backed by the imperial government in London. It was recommended that the assizes should be empowered to: ‘mitigate in their discretion certain punishments in certain cases’ and ‘it is expedient and urgent to provide previously to the approaching Assizes, some temporary means of relief against the excessive severity of certain Dispositions of the Criminal Code of 7 August, 1793’.⁹⁴ It was further suggested that ‘relieving the Colony from the operations of the Criminal Code at present in force in it and that the *Code Pénal* of 1832 should be revised and modified in order to its being carried immediately into effect’.⁹⁵ On 14 August 1838, Ordinance 6 of 1838, a new criminal code, mainly inspired by and based on the Napoleonic *Code Pénal* of 1810, met with approval by the British.⁹⁶ The new code removed or lowered the scale of some penalties.⁹⁷ In relation to the period under examination in this thesis, the penal

⁹³ NLA, MAUR 111, The Mauritius, an Exemplification of Colonial Policy, p. 14, 1837.

⁹⁴ SRNSW, TP 144, Ordinance 10, from Governor William Nicolay, 1836.

⁹⁵ Venchard, ‘Evolution du Droit Pénal Mauricien’, pp. ix–xii.

⁹⁶ The French law of 28 August 1832, which remodeled a number of provisions of the code by reducing the scope of the death penalty, removed those considered barbaric punishments and lowered the scale of some punishments. The same 1832 law brought about a distinction between political crimes and common law offences. Venchard, ‘Evolution du Droit Pénal Mauricien’, p. xiii.

⁹⁷ Venchard, ‘Evolution du Droit Pénal Mauricien’, pp. ix–xii.

codes of 1791, 1832 (1834) and 1838 therefore instructed the judges to define criminal offences, allocate sanctions and determine sentences.

Battle over the Legal Language

Language is often associated with national identity. To that end the cultural voices of the French in Mauritius resonated with the fierce protection of their French language traditions after annexation in 1810. The political decision by the British to retain the legal system and language in a ceded colony was most acute in colonies such as Mauritius where a European population was already a dominant force, both in terms of land holdings and political and socio-economic power.⁹⁸ It was therefore French not English that was the written language in the criminal trial records from Mauritius for the period under examination, apart from a smattering of official legal correspondence written in English.

Contemporary visitors to the colony often remarked on the lack of understanding of the official language, English, and how few members of the population spoke the language at all. In this thesis, all trial summaries which accompanied the Mauritian convicts to the Australian penal colonies and to Robben Island were written in French. This reflects the Mauritian legal system's strict adherence to the French legal linguistic tradition during the period of penal transportation. Already in 1829, in their final report on the Slave Trade in Mauritius, the Commission of Eastern Inquiry recommended that the English language as well as English culture be widely

⁹⁸ Palmer, 'A Descriptive and Comparative Overview', p. 29.

promoted.⁹⁹ The French-Mauritian judiciary fiercely resisted these recommendations.

The recurrent argument over which language should be the oral and written language in the law courts had persisted since Mauritius became a British colony, again indicating French linguistic and cultural roots ran very deep.

One of the first changes in the evolution of the linguistic infrastructure in the courts of Mauritius came into effect on 1 January 1839. Under general orders and rules of the court:

... no Advocate or Avoué shall be admitted to practice in the Supreme Court or Court of First Instance who shall not be sufficiently acquainted with the English Language fully to understand the same and to employ it, if need be, both orally and in any written pleading or other legal document whatsoever.¹⁰⁰

Not until 25 February 1841, more than 30 years after Mauritius became part of the British Empire, did an Order in Council determine that all ordinances and proclamations were to be printed in English. This shows the difficulty in introducing English as a legal ‘source language’ in Mauritius.¹⁰¹ The ability of the colonial population to understand or be able to adhere to another ‘source language’ was one of the most important considerations in retaining the ‘local’ legal language in colonies such as Mauritius. As a compromise, in 1838 the penal code was printed in both French and English.¹⁰² These printed legal documents had two columns on each page allowing for French and the English translation of the legal code to appear side by

⁹⁹ NAM, IB 20/7-12, report of the commissioners of eastern inquiry upon the slave trade at Mauritius, ordered by the House of Commons, 1 Jun. 1829.

¹⁰⁰ NLA, MAUR 315, Raymond Bruzard, Avocat, *Recueil des Decisions Judiciaires de l’Ile Maurice*, reports of cases argued and determined before the Courts of the Island of Mauritius in 1842, 1843, 1844, 1845, Mauritius, 1845, appendix 2, p. xvi.

¹⁰¹ In most mixed legal jurisdictions there are at least two legal source languages, mostly English and another European language. Palmer, ‘A Descriptive and Comparative Overview’, p. 90.

¹⁰² All official documents were printed in both languages until 1865.

side. Another Order in Council followed in September 1846 declaring that as of 15 July 1847 all criminal proceedings were to be conducted in English.¹⁰³

During the quarterly sessions of the Assizes Court, proceedings often continued well into the night to complete the caseload.¹⁰⁴ The Court of Assizes was in session on the evening of 14 July 1847 when, at midnight, the shift from one judicial language to another was to take place.¹⁰⁵ A young barrister-turned-filibuster, Cécilcourt Antelme, deliberately prolonged proceedings. At the stroke of midnight, as church bells rang out, he wrapped up his pleading in French and in dramatic fashion farewelled his native tongue in the courtroom.¹⁰⁶ During this late hour, with many possibly still celebrating the French *Fête Nationale* (Bastille Day), a crowd marched into the courthouse to listen to the final words spoken in French. As they carried Antelme from the courtroom emotional outbursts and thunderous cheers erupted. Businesslike, past midnight, the session continued, with proceedings now conducted in English. From 1853 all criminal procedure was conducted according to British law, eliminating the criminal procedure of 1831.

The fact that 37 years after the annexation of Mauritius the change of language in the criminal courts almost paralysed the daily operations in the time that followed is extraordinary. Allowances and new legislation was introduced to accommodate the lack of language skills of the assessors attached to the Court of Assizes. This speaks volumes of the strong cultural orientation of the Mauritian legal fraternity, the French

¹⁰³ de Burgh-Edwardes, *History of Mauritius 1507–1914*, p. 77.

¹⁰⁴ Moses Nwulia, *The History of Slavery in Mauritius and the Seychelles, 1810–1875*, Associated University Press, East Brunswick, 1981, p. 217.

¹⁰⁵ Was it a coincidence that this change was ushered in on 14 July, the French national day?

¹⁰⁶ de Burgh-Edwardes, *The History of Mauritius, 1507–1914*, pp. 77–78.

linguistic influence in the courts and the reluctance of French native speakers to learn to speak and understand English, the official language of the colony.

Even the *Courier* in Hobart Town (25 December 1847) reported the dramatic scenes in the Court of Assizes in July 1847. The change in the legal language in the Mauritian courts was obviously newsworthy. A notice of ‘an event of no small importance and general inconvenience’ had occurred at the Assizes Court in Mauritius, ‘in consequence of the introduction of the English language in the Law Courts’. The newspaper wrote:

When the Court met for the trial of prisoners, it was found that none of the assessors were sufficiently acquainted with the new language to take the usual oath. The expedient resorted to by the Government was to introduce a law into the Legislative Council legalizing the making of a supplementary list of twenty-five persons to fill the place of those who were incompetent from ignorance of the language.¹⁰⁷

Throughout the British Empire the reliance on court interpreters was often a complicated affair.¹⁰⁸ The court interpreter in a multilingual colony played a central role in legal proceedings. As a communicative tool, accurate translations and interpretations was an important part of colonial courts to determine guilt or innocence. Within the French legal system, where establishing intent was essential in order to arrive at a predetermined sentence, it was even more crucial. The arrival of thousands of Indian workers from the mid-1830s, speaking different Indian languages and dialects, only added to the already complicated linguistic landscape in the courts. As more Indian workers appeared before the courts, Indian language interpreters also

¹⁰⁷ *The Hobart Town Courier*, 25 Dec. 1847, p. 4.

¹⁰⁸ For more on translators in colonial courts refer to Johnston, *The Paper War*, p. 180.

became more common. Tamil and ‘Mauritian language’ *Créole* speakers most frequently made use of interpreters.

Reverend Patrick Beaton probably summed up the Mauritian language paradox best when commenting on his stay in Mauritius in the 1850s. Feeling like a ‘foreigner’ in a colony which had been under British rule for decades, he asked:

Is it possible that the English language is unknown to all save Englishmen, in a colony which has been in the possession of England since 1810? Is it credible that the Collies even are taught the barbarous jargon known as Creole, and that an Englishman, standing in an English colony should discern no traces of the English language, or English manners, and or English civilisation?¹⁰⁹

Conclusion

The multifaceted nature of imperial ambition and enterprise saw modern European powers traverse oceans. European ambition saw colonisers warring over colonial possessions in far-flung places, including the Indian Ocean island of Mauritius. As in the metropole, colonial courts became contested spaces that shaped public opinions and where ideological debates took place. In colonial societies, law became the crucial tool the coloniser used to control the colonised.

France had maintained a foothold in Mauritius for almost one hundred years before the arrival of the British, and the European rivalry between these two seafaring nations was mirrored in the colony. The French-Mauritians’ loyalty and connection to France was strong—legally, socially and culturally—bonds which had proved hard to sever. Another European coloniser imposing sanctions, thwarting the island’s already

¹⁰⁹ Patrick Beaton, *Creoles and Coolies or Five Years in Mauritius*, Nisbet, London, 1859, p. 13.

established position as an *entrepôt* in the south western Indian Ocean, questioning the plantation practices and the perceived hijacking of their legal system was bound to create tensions.

The evolution of the Mauritian legal system post British annexation came to be defined by local political, social and economic tensions, not only testing the role of the Mauritian judiciary, but also its integrity and loyalty or otherwise to the new colonial ruler. British self-interest, strategic, economic and social considerations were at play in the attempt by London to mix civil and common law in Mauritius. The battle about legal systems and British control of the courts, about language and communication generally and in the courts, between the pro- and anti-slavery movements, fought by planters and their supporters in the streets of Port Louis and around the indemnity-negotiating table in London were indicative of the tensions which existed in the colonial society of Mauritius. We know less about the views of those whose lives were affected by the outcomes of these various battles. Would English common law, with English-speaking judges holding discretionary powers, be preferable to French-speaking judges working within rigid French civil law codifications with limited discretionary powers? Nineteenth-century law, delivered in French or English, codified or uncoded, was often harsh and impacted colonial subjects in a number of ways. There is no doubt that the law was at the centre of colonial decision-making and ambition.

CHAPTER 2

Mauritian Courts at Work: public morality, gender perspectives and legal decisions

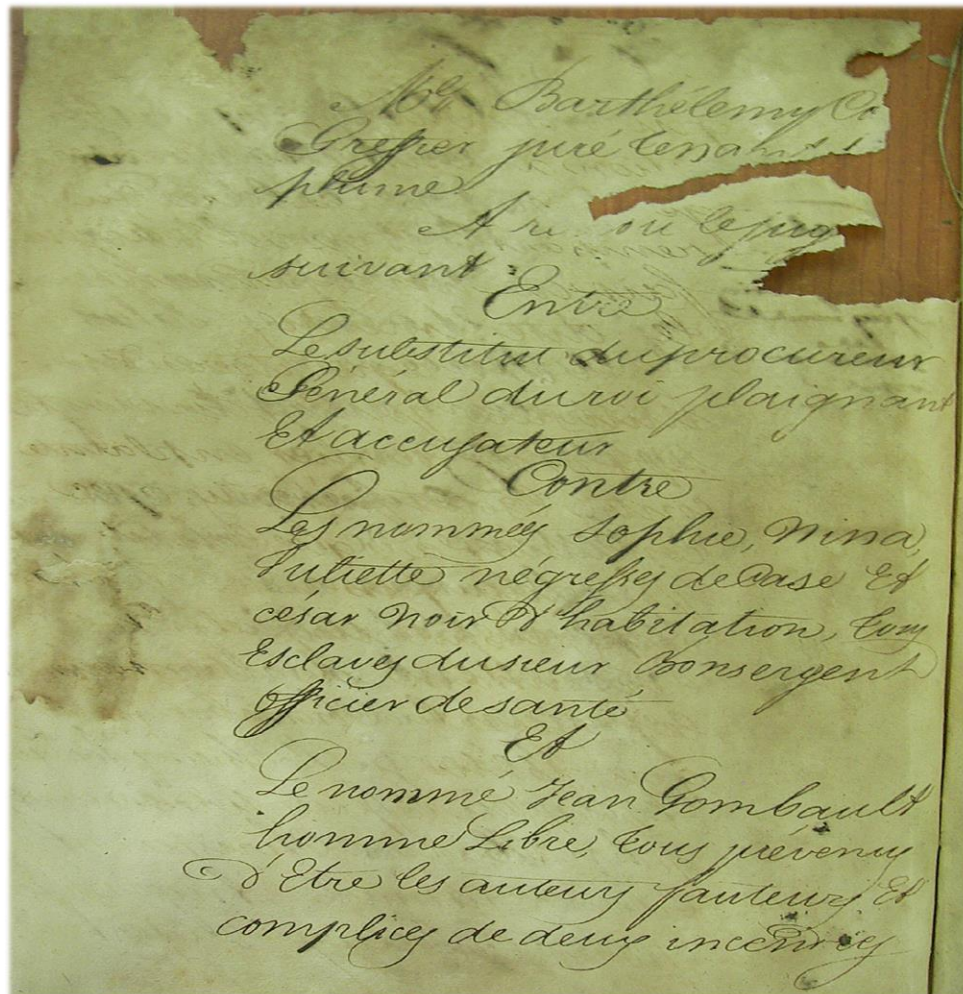


Figure 4 Trial of Sophie and her co-accused: NAM, JB 152, Apr.1823.

[T]here has not existed any difference in the corrections ordered by the masters in respect to them ['Negro' women] and those in use with regard to the men. Rest assured, Gentlemen, that his Majesty's Government will suppress the punishment of flogging for Negro-women. It must in fact, be admitted, that the weakness of their sex and public decency would seem to require, that Negro-women should undergo the lash only in extraordinary cases and with the concurrence of the local authorities. Do not irons, the stock,

imprisonment, offer sufficient means of punishing Negro-women, whose condition, besides being almost always precarious, require great care? This voluntary determination on their [the planters'] part will be properly appreciated by His Majesty's Ministers, and I shall experience a sincere satisfaction in having to announce that the inhabitants of Mauritius did not stand in need of being compelled, by any coercive means to adopt a course for which sound morality calls for.¹

Introduction

The metropolitan and colonial exchanges and interactions facilitated by the expansion of the British Empire created a 'seedbed' for new ideas which shaped cultures and societies influencing perceptions of race, class and gender.² Gender and gender relations were powerful constructs exported by Western empires to the colonial world. Eurocentric attitudes to gender and the conceptualisations of masculinity and femininity informed debates about morality as well as influencing political and legal decision-making.³ In the metropole, middle-class ideals of chaste, virtuous, respectable and maternal women living within the family setting shaped the narratives of public morality.⁴ Deeply woven into the fabric of colonial societies was the notion of female criminality, defined by mutable and unstable attitudes to women in general and to women who committed crimes in particular. The influence of gender is therefore not just an intangible, contested theoretical concept but is evident in the lived experiences of both men and women in colonial and metropolitan societies.

¹ TNA, PP. 1829. XXV (338), slaves in Mauritius, circular to the commandants and civil commissaries of the districts from Governor Sir Lowry Cole, 15 Dec. 1826, pp. 32–33.

² John Gascoigne, 'The Expanding Historiography of British Imperialism', *The Historical Journal*, vol. 49, no. 2, 2006, p. 580.

³ Angela Woollacott, *Gender and Empire*, Palgrave Macmillan, New York, 2006, pp. 1–7; Kathleen Wilson, *The Island Race: Englishness, empire and gender in the eighteenth century*, Routledge, London, 2003, p. 77

⁴ Joy Damousi, *Depraved and Disorderly: female convicts, sexuality and gender in colonial Australia* Cambridge University Press, Cambridge, 1997, p. 39.

In Mauritius and other colonies throughout the British Empire, male and female crime and punishment was discussed within a legal paradigm that reflected the structures of these societies. In the courts female criminality in particular became part of scientific and medical discourses related to dysfunctional female biology or psychology.⁵ The judicial process also amplified colonial notions of acceptable female behaviour contrasted by female deviance. In the conventional gender hierarchy the juxtaposition of female physical weakness and moral superiority meant that the criminalisation of women, which led to their moral corruption, was all the more stark. The disorderly characterisations of the Mauritian female convicts included in the cohort of this thesis challenged cultural constructs and stereotypes of the female criminal. As Kirsty Reid points out, contemporary discourses in the metropole saw female criminality in a colonial setting as the ‘ultimate source of moral pollution’.⁶

This chapter explores the complex relationship between gender and crime in Mauritian society in the first half of the nineteenth century. It will do so by piecing together the lived experiences of a group of females who traversed the legal system in Mauritius, plotting the way in which many of the pivotal transition points in Mauritian society influenced their personal histories in the period under investigation in this thesis. In the following chapters I will return to these tension points and the sites of power where colonial politics, law, crime and punishment, sexuality, race and gender coalesce. This chapter will show how the narratives of criminalised and racialised women further our understanding of the operation of labour extraction, ownership and

⁵ Cathy Kohler Riessman ‘Women and Medicalization: a new perspective’, in Rose Weitz, ed., *The Politics of Women’s Bodies*, Oxford University Press, New York, 2010, p. 49.

⁶ Kirsty Reid, *Gender, Crime and Empire*, Manchester University Press, Manchester, 2007, pp. 178 and 193.

court politics in Mauritius. Key questions will be: how did the law courts and the Mauritian administration wrestle with the notion of female criminality? What part did gender play in the court's decision-making? This chapter will conclude by looking at the Mauritian authorities' attitudes to the children of transportees.

Sarah Baartman, the 'Venus Hottentot' paraded around Europe in the early nineteenth century, represented the antithesis of Victorian virtue. One of many emerging colonial themes was the need to ensure control over the black, female colonial body through patriarchal language and representations. Baartman became an example of the social construction and ideological vocabulary of the colonial 'other'—a dangerous female crossing the racial line in an avalanche of gendered representations.⁷ She stood for many colonial women who were judged (quite literally) against the ideal of middle-class femininity as conceived by contemporary popular culture and rhetoric during a period of political and social transition, underpinned and articulated by fears and anxieties. The female black also served as a marker of difference, pitting the civilised against the savage other.

The crimes committed by the women transported from Mauritius were far more serious than the petty thefts propelling most of their British counterparts into exile. They ranged from murder and attempted murder to poisoning, arson and theft. Three had their death sentences commuted to transportation for life. Sophie and Thérésia, two of the three initially sentenced to death, were slaves of Madagascan origin.⁸ The third capital convicted woman, Maria Simonette, (hereafter Simonette) was a free

⁷ Rachel Holmes, *African Queen: the real life and death of a Hottentot Venus*, Random House, New York, 2007, p. 6.

⁸ NAM, JB 152, Court of First Instance, trial records of Sophie, 17 Sep. 1823; SRNSW, NRS 1155, 2/8252, Court of Appeal, trial summary of Thérésia, 16 Nov. 1830, pp. 71–81.

black Creole from the Seychelles.⁹ Two Mauritian Creole child slaves, Constance Couronne and Elisabeth Verloppe should have received the death sentence, mandatory in cases of poisoning, but as both girls were under the age of 16 their penalty was commuted to transportation for life.¹⁰ Another two women, Joséphine Ally, a free Mauritian Creole and Christine (alias Justine), a Mozambiquan ex-apprentice, received the minimum sentence to transportation—seven years.¹¹ The only woman of Indian origin, Samba, was transported to Australia for life.¹² The ninth woman, convicted of arson and sentenced to transportation in Mauritius, never made it to Australia. Her original trial summary, written in French, did however travel across the ocean and is part of the collection of Tasmanian papers in the State Library of New South Wales.¹³ Cécile Louis's name appears on a description list of fourteen convicts transported to Van Diemen's Land on the *Eleanor* in 1841.¹⁴ A note on the bottom of the list states that Cécile died in jail just days prior to the ship's departure.

The lives of these women offer compelling insights into the complex circulation of people within the British Empire.¹⁵ The illegal slave trade in Mauritius after 1813 and

⁹ SLNSW, TP, vol. 143, Court of Assizes, trial summary of Maria Simonette, 9 Jul. 1839.

¹⁰ SRNSW, NRS 1155, 2/8255, Supreme Court, trial summary of Constance Couronne and Elisabeth Verloppe, 24 Sep. 1833, pp. 81–86.

¹¹ SLNSW, NRS 1155, 2/8255, Supreme Court, trial summary of Marcelin Currac, Joséphine Ally and Hypolite, 18 Sep. 1833, pp. 49–60; SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Christine, (alias Justine), 27 Nov. 1843, pp. 57–61.

¹² SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Samba, Osensa, Yacousa and Salicouty, 1 Dec. 1843, pp. 33–39.

¹³ NAM, JB 314, Court of Assizes, trial records of Cécile Louis, 4 Dec. 1840; SLNSW, TP, vol. 144, Court of Assizes, trial summary, Cécile Louis, 4 Dec. 1840.

¹⁴ SLNSW, DLADD 540/38-42, convict description list for the ship *Eleanor*, 1841.

¹⁵ Historian Marie Jones has listed 41 women tried in places outside the British Isles and sentenced to transportation to the penal colonies of New South Wales and Van Diemen's Land. These women came from all 'corners' of the empire, from places as varied as Barbados, Bermuda, Dominica, Demerara, Demerara-Essequibo CCJ, Fort William (Calcutta), Graham's Town (Cape Colony), Honduras, India, Isle of Man, Jersey, Jamaica, New Zealand and Mauritius. During the period under investigation for this thesis the Mauritian courts sentenced nine women to transportation to the Australian penal colonies.

the economic indenture migration from 1834 effectively ran parallel to the flow of convicts, often masking the true ethnic or geographical origin of many of the transportees, in particular those transported from slave colonies in the British Caribbean and the Indian Ocean.¹⁶ The Mauritian female transportees represent the multicultural, multi-ethnic, pluri-religious and socially layered colonial society of Mauritius in the first half of the nineteenth century.

Female Slave Resistance: malicious intent

The commencement of transportation from Mauritius to the Australian penal colonies in 1825 coincided with a growing campaign in Britain to abolish slavery. Colonial administrators and the Mauritian plantocracy feared the abolition of slavery would lead to social and political anarchy, seriously threatening traditional authorities. In this climate of anxiety and fear, the prospect of impending emancipation of Mauritian slaves and the possibility of retaliation from the large slave population only added to the tensions.

The case of Thérésia, a 25-year-old *Négress a pioche*, illustrates this tension and shows how acts of defiance attracted the full force of the law. On 10 April 1830 she had attacked her master's daughter, 10-year-old Anastasia Michel, as the young girl was playing with her dolls in the shade of a mango tree on her father's property in the

Marie Jones, *From Places Now Forgotten: an index of convicts whose places of trial were outside the UK and Ireland*, rev. edn., published by Marie Jones, Cardiff, New South Wales, 2005.

¹⁶ The abolition of the slave trade throughout the British Empire in 1807 came into effect in Mauritius from 1811 and enforced from 1813.

district of Pamplémousses.¹⁷ Anastasia did not pay attention to her father's slaves working a short distance away. She only became aware of the Malagasy slave's fury when she was struck from behind with a hoe. She fell to the ground, blood pouring from a head wound. As Thérésia was lifting the hoe to inflict a fatal blow, Anastasia's sister, Léonide, screamed. Startled, Thérésia threw the hoe and fled.¹⁸

Léonide's screams alerted their father, Jean Pierre Marie Michel. Running towards his children he came face to face with Thérésia. In a desperate move to escape, she pounced and grabbed her master by the testicles. She squeezed as hard as she could in an attempt to make him faint so she could make her getaway. This somewhat bizarre act perhaps hints at an underlying and unspoken (at least in terms of the court records) history of sexual abuse as she directed her attack at her master's genitalia. The assault on Michel was certainly personal, intimate and violent. Two hired slaves belonging to Mr. Jacques Naïna working on the property came to Michel's rescue. With escape no longer an option, she reportedly begged her master to 'kill her by shooting her with a shotgun'.¹⁹ When later asked to offer an explanation as to Thérésia's action, Michel hinted that it was an act of revenge, but failed to offer further details. The type of slave crime or resistance committed by Thérésia, as Barbara Bush explains of the Caribbean slave experience, meant that slaves (both men and women) 'did not repudiate law and morality' but created their own codes in defiance of harsh treatment, rigid control and repression.²⁰

¹⁷ NAM, JB 216, Court of First Instance, trial proceedings of Thérésia and Azémia, 24 Apr. 1830.

¹⁸ SRNSW, NRS 1155, 2/8252, Supreme Court, trial summary for Thérésia, 16 Oct. 1830, pp. 71-81. NAM, JB 216, trial records for Thérésia, with definitive conclusion, 16 Oct. 1830.

¹⁹ NAM, JB 216, police report in the case of Thérésia, 11 Apr. 1830.

²⁰ Barbara Bush, *Slave Women in Caribbean Society, 1650-1838*, Indiana University Press, Bloomington, 1990, p. 31.

The violence and cruelty inherent in a master–slave relationship, as Orlando Patterson explains, starts with the initial ‘violent act of transforming free man [woman] into slave’.²¹ Subjected to a lifetime of submission and obedience makes a slave the ‘ultimate human tool’, forcibly alienated from social and cultural heritage and open to abuse.²² As evidenced by Thérésia’s work among the mango trees on the Michel’s property, female slaves were involved in the production of food and Thérésia was performing an important function within the Michel household. Megan Vaughan describes the pre-plantation dynamics of slavery on small properties in Mauritius as ‘an invariable institution’, subject to complex personal, interpersonal and external dynamics.²³ In the early 1830s there were still many small slave holdings, such as Michel’s, in Mauritius where the interplay of these dynamics saw Thérésia try to kill her master’s daughter.

The examination of a police report dated 31 May–2 June 1828 investigating complaints of ill treatment provides further motive for Thérésia’s violent acts against her master and his family.²⁴ Thérésia had used one of the few legal rights open to slaves, the right to complain.²⁵ General mistreatment, physical abuse and working on Sundays were part of the initial complaint.²⁶ Bringing attention to what was happening on the property would have made Thérésia vulnerable to further abuse and humiliation. The appointment of a protector of slaves was not in place in Mauritius

²¹ Orlando Patterson, *Slavery and Social Death: a comparative study*, Harvard University Press, Cambridge, 1982, p. 3. Unless you were born into slavery, in which case this status was inherited.

²² Patterson, *Slavery and Social Death*, p. 7. Christopher Brown, *Moral Capital: foundations of British Abolitionism*, The University of South Carolina Press, Chapel Hill, 2006, p. 132

²³ Megan Vaughan, *Creating the Creole Island: slavery in eighteenth-century Mauritius*, Duke University Press, Durham, 2005, pp. 200–201.

²⁴ NAM, RA 371, general police report with judgment of complaint filed by the slave Thérésia, 31 May–2 Jun. 1830.

²⁵ TNA, PP. 1829. XXV (338), Slaves in Mauritius, 3 Jun. 1829, Article 1, p. 105.

²⁶ TNA, PP. 1829. XXV (338), Slaves in Mauritius, 3 Jun. 1829, Article 1, p. 105.

until 7 February 1829, almost a year after Thérésia's initial complaint.²⁷ Naturally, this appointment had been very unpopular among Mauritian planters. They felt that powers vested in the general prosecutor overlapped with those of the newly appointed protector of slaves and this role was therefore superfluous. The protector of slaves' interventions often led to a fractious relationship with the slave owners.

Following the investigation, in a report dated 10–11 July 1828, it was ordered that the Michel 'establishment be monitored by the local authority of the district' and, because of the mutinous atmosphere on the property, Michel was 'not to punish his blacks or negresses other than by the means of the authority of the Police of the canton'.²⁸ The report further recommended that Michel himself was to treat his slaves 'without resentment and with humility, and to pay for the hospital fees and the jail fees which could occur'.²⁹ It seems that the authorities were preparing for further brutality.

When Thérésia, almost two years after her initial complaint, attacked Anastasia she may not have been aware of the report's findings. Was it possible that the authorities had been lax in monitoring the property? Had Michel's abusive behaviour towards his human chattel continued unabated? Was it the lack of improvement in the slaves' conditions that had prompted Thérésia to take matters into her own hands, attacking what her master held most dear, his children? Thérésia was sent to the civil jail in Port

²⁷ Samuel de Burgh-Edwardes, *The History of Mauritius, 1507-1914*, East and West Ltd, London, 1921, p. 63.

²⁸ NAM, RA 371, Thérésia, general police report 10 to 11 Jul. 1828.

²⁹ NAM, RA 371, Thérésia, general police report 10 to 11 Jul. 1828.

Louis to await trial.³⁰ On 24 April, 1830, Thérésia and Azémia, a female slave working alongside her on that fateful day, both stood accused of attempted murder.³¹ In her statement Azémia said she had refused to participate in the planned killing. The court eventually dropped the charges against her. Little Anastasia, although receiving a severe head wound, survived the attack.

In 1830 Mauritius still adhered to the Capitulation Proclamation of 1810, signed between Britain and France.³² As a slave, Thérésia was tried according to Article 26 of the Letters Patent of 1723, a separate criminal code based on a version of the French *Code Noir* of 1685.³³ Part of the philosophy of the *Code Noir* was to bring directives on slavery into the public arena with regard to punishment. Within the French legal system it was important to bring slaves ‘under the hegemony of the law’, reflecting the anxieties about the ability to control a servile population.³⁴ It was the explicit assertion that in the area of criminal responsibility, the slave lost his or her status as a minor or chattel and was considered a free person in a court of law.³⁵

³⁰ NAM, RA 371, Thérésia, general police report 10 to 11 Jul. 1828. Attached to the report in July 1828 was also a report on the prison population. Of 174 prisoners, 12 blacks in chains were out digging in the streets, 50 convicts had been assigned to work in the streets and Dr. Shaw visited the jail at 11 am—two free and three slaves were dead. There were 11 guards in service with three couriers. The jail was in some ways as harsh as the plantation. However, slaves sometimes preferred the jail to plantations, which gives an indication of the treatment many slaves endured at the hand of their masters or overseers.

³¹ NAM, JB 216, Court of First Instance, trial proceedings of Thérésia and Azémia, 24 Apr. 1830.

³² TNA, CO 167/4, original Agreement of the Surrender of Mauritius to the British Empire, 3 Dec. 1810.

³³ SRNSW, NRS 115, 2/8252, trial summary, 16 Nov. 1830; TNA, PP. 1828 XXVI (626), Slaves in Mauritius, (*Code Noir*), Letters Patent of 1723, article 26, p. 15.

³⁴ Vaughan, *Creating the Creole Island*, p. 84.

³⁵ TNA, PP. 1828. XXVI (526), Slaves in Mauritius, (*Code Noir*), Letters Patent of 1723, Article 25, p. 15. See also chapter 1 regarding the legal status of a slave before the criminal court in Mauritius.

Article 26 of *Code Noir* stated that slaves who ‘hit their master, mistress, the husband of their mistress or their children, causing bleeding, should be punished by death.’³⁶

Anastasia, Thérésia’s master’s child, had been bleeding profusely from the head wound inflicted by the slave. Overwhelming evidence led the court in this instance to establish that she had acted with malicious intent. *Code Noir* had served as a critical element in social control, securing obedience and deference to social and political hierarchies. The court was able to apply an exact code fitting the crime and impose an exact punishment. The court, based on judicial reasoning in search of the ‘truth’ had arrived at a pre-set sentence and, predictably, condemned Thérésia to death.³⁷

In response to the death sentence, the protector of slaves lodged a petition on Thérésia’s behalf. Mr. Michel, as Governor Charles Colville sarcastically put it, ‘activated by a laudable sentiment of humanity ... also affixed his signature’ to the petition.³⁸ Perhaps he felt a pang of guilt over his slave’s predicament? In a dispatch from Colville to the Secretary for War and the Colonies Viscount Robert Goderich, he included a letter from the chief judge of the colony, putting forward some mitigating circumstances as to why Thérésia’s death sentence should be overturned. Having read Thérésia’s medical report, Colville must have been aware of the conditions on the Michel property. Colville wrote, ‘from circumstances within my knowledge I could not consistently with ideas of duty and obligation to unite mercy with law and justice sign the death warrant of Thérésia’.³⁹

³⁶ TNA, PP. 1828. XXVI (526), Slaves in Mauritius, (*Code Noir*), Letters Patent of 1723, Article 26, p. 15.

³⁷ NAM, JB 216, verdict in the trial of Thérésia with definitive conclusion, 16 Oct. 1830.

³⁸ SRNSW, NRS 155, 2/8252, letter from G. Barry to Governor Charles Colville, proclamation regarding the commutation of the death penalty of the slave Thérésia, 9 Dec. 1830, pp. 67–69.

³⁹ NAM, SD 11, dispatch no. 41, relative to the case of the slave Thérésia, from Charles Colville to Viscount Goderich, in response to dispatch no. 39, 8 May 1831.

In his dispatch to Goderich regarding Michel's claim for compensation he noted that he would 'recommend caution in the assessment of the price to be paid by gvt [*sic*] according to existing law of the owner of the transported slave.'⁴⁰ However, Michel was rewarded handsomely to dispose of what Cassandra Pybus calls 'troublesome property'.⁴¹ Colville wrote to Goderich, 'for want of what could constitute legal proof, he received £100 instead of perhaps a shilling!'⁴² Due to the circumstance surrounding Thérésia's case her death sentence was commuted to transportation for life.⁴³

Diego Garcia, a location for convicts and slaves suffering from leprosy, and the notorious prison on Robben Island in the Cape Colony were possible penal destinations for the slave Thérésia, but after some consideration these destinations were deemed unsuitable.⁴⁴ Instead, she was transported to New South Wales, considered the most humane option. Thérésia arrived on the *Celia* on 11 March 1831.⁴⁵ Stepping ashore, Francis Rossi immediately assigned her as an inside-outside servant. As Clare Anderson points out, the assignment of Mauritian criminally convicted slaves to Rossi, a former general superintendent of the convict department in Mauritius, became a 'neat joining up of the pan-imperial circle of convict transportation'.⁴⁶

⁴⁰ NAM, SD 11, dispatch no. 41, from Charles Colville to Viscount Goderich, 8 May 1831.

⁴¹ Cassandra Pybus, 'A Touch of the Tar: African settlers in colonial Australia and the implications for issues of aboriginality', in *London Papers in Australian Studies*, *Menzies Centre for Australian Studies* no. 3, 2001, p. 13.

⁴² NAM, SD 11, dispatch no. 41, from Charles Colville to Viscount Goderich, 8 May 1831.

⁴³ NAM, SD 11, dispatch no. 41, from Charles Colville to Viscount Goderich, 8 May 1831.

⁴⁴ Clare Anderson, *Subaltern Lives: biographies of colonialism in the Indian Ocean World*, Cambridge University Press, Cambridge, 2012, p. 77.

⁴⁵ *Celia*, arrived New South Wales, 11 Mar. 1831, fiche 698/143/907.

⁴⁶ Anderson, *Subaltern Lives*, p. 77. Sophie, another Malagasy slave, transported to New South Wales in 1825, also worked for Rossi. He too arrived from Mauritius in 1825 to take up the post of superintendent of police in New South Wales.

The Fear of Poisoning

Poisoning was one of the most feared crimes by slave owners. Among French colonists in particular, this fear may have had its roots in the ‘Parisian “affair of the poisons” of 1678–1682’.⁴⁷ The beheading of a young noble woman for killing her father and brothers using poison initiated a period of poison terror. The hysteria around this case led to a string of individual arrests for similar offences. In the end the number of arrests related to poisoning within the upper echelon of French society was so great that King Louis XIV intervened and halted the trials, up until that point heard in a special tribunal.⁴⁸

In the seventeenth and eighteenth centuries there was a tightening of the legal framework around the sale and possession of poison. In the French slave colonies in the Caribbean it was illegal for slaves to keep or make poison.⁴⁹ In Martinique, as late as 1822, a court was set up especially to try poison cases. Nineteenth-century slave owners still lived with the terror of being poisoned.⁵⁰

Poison was a favoured ‘weapon’ of protest by slaves and feared by their masters. In Mauritius in 1833 two slave girls, 12-year-old Elisabeth Verloppe and eight-year-old Constance Couronne, placed with Madame Morel to be taught needlework, had been

⁴⁷ Diana Paton, ‘Witchcraft, Poison, Law and the Atlantic Slavery’, *The William and Mary Quarterly*, vol. 69, no. 2, 2012, pp. 242–243. A Royal Edict was put in place to regulate the purchase of poison. It was only three years later that *Code Noir* was promulgated as a legal framework for the conduct of slaves and masters in colonial possessions and this may be one reason why there is no specific punishment for poisoning in *Code Noir*.

⁴⁸ Paton, ‘Witchcraft, Poison, Law and the Atlantic Slavery’, p. 242.

⁴⁹ This included Saint Domingue, Guadeloupe and Martinique.

⁵⁰ For more on poisoning in the Caribbean see Barbara Bush, *Slave Women in Caribbean Society, 1650–1838*, Indiana University Press, 1990; Hilary Beckles, *Natural Rebels: a social history of black women in Barbados*, Rutgers University Press, New Brunswick, 1989.

singled out as the possible culprits in the attempted poisoning of the mistress of the house, who fell ill after taking afternoon tea with her young son. Possibly drawing on her French cultural angst and her suspicion of African sorcery, Madame Morel immediately suspected poisoning. Elisabeth had served the tea and another slave had observed Constance put a powder in the teapot.⁵¹ Elisabeth had been complaining about working for Madame Morel and had been overheard saying that she wanted her dead so she could return to her own mistress. Dr. Cox, Madame Morel's doctor, allegedly obtained a confession from Constance, after she had supposedly admitted to another slave that she did put arsenic in the tea. This powder later proved to be a type of laxative.

An investigation by the courts to determine the existence or non-existence of malicious intent followed. The eight-year-old girl's confession that she believed the powder to be arsenic was all-important. Did Constance even know what arsenic was? French law sought proof of intent or a confession in order to proceed. Megan Vaughan suggests that 'the emphasis on intent and confession within this criminal legal system assumed a number of things about agency, knowledge, and subjectivity that seem apparently in contradiction with the state of slavery, with its presumed loss of agency, its nonbeing.'⁵² In this case, the court had uncovered intent and had obtained a confession. It therefore had little hesitation in accepting proof of malicious intent based on Constance's confession and Elisabeth's alleged collusion. The fact that the powder was not poisonous appears irrelevant.

⁵¹ Cassandra Pybus, 'Children in Bondage: Elisabeth Verloppe and Constance Couronne', in Lucy Frost and Colette McAlpine, eds, *From the Edges of the Empire: convict women from beyond the British Isles*, *Convict Women's Press, Hobart*, 2015, p. 64. Madame Morel and her son both made a full recovery.

⁵² Vaughan, *Creating the Creole Island*, p. 95.

The French judiciary in Mauritius had on many occasions over the previous century grappled with the difference between poisoning as a devious act with evil intent and the malevolent world of black magic.⁵³ That such young girls should be capable of either poisoning or sorcery seems preposterous. Nevertheless, malicious intent was established and both were charged with attempted murder.⁵⁴ The trial commenced on 24 September 1833.⁵⁵ Cassandra Pybus has raised the obvious concern that ‘learned men’ of the court were willing to ‘believe that an illiterate 8-year-old knowingly administered arsenic to her mistress so she would not have to work anymore’.⁵⁶ In 1833, the atmosphere of uncertainty in the colony was intense, as the abolition of slavery was moving ever closer to reality. The fears and anxieties permeating pre-emancipation Mauritius were also on full display in the Mauritian courts.

Unfortunately for the two children their harsh punishment reflected these social anxieties. It also epitomised the ‘deep paranoia’ which existed amongst the slave owners in Mauritius and spoke of their fear of resistance and sabotage which would threaten the moral and social order of Mauritian society.⁵⁷

In 1830, during Thérésia’s trial, the court was able to try the case using an article in *Code Noir* which fitted the crime committed by this slave and impose a corresponding sentence. Three years later, in the case against Elisabeth and Constance, the Court of Assizes tried the two young girls according to *Code Pénal* Penal of 1832, not *Code*

⁵³ Vaughan, *Creating the Creole Island*, pp. 97-99.

⁵⁴ SRNSW, NRS 1155, 2/8255, trial summary for Elisabeth Verloppe and Constance Couronne, 24 Sep. 1833, pp. 81–86.

⁵⁵ SRNSW, NRS 1155, 2/8255, extract from the minutes, 24 Sep. 1833, pp. 81–86; NAM, JB 254 and 249 trial records of Elisabeth Verloppe and Constance Couronne.

⁵⁶ Cassandra Pybus, ‘Children in Bondage’, p. 66.

⁵⁷ James Bradley and Cassandra Pybus, ‘From Slavery to Servitude: the Australian exile of Elizabeth and Constance’, *Journal of Australian Colonial History*, vol. 7, 2007, p. 34.

Noir.⁵⁸ At this time the courts were prepared to alternate between the existing slave and penal codes and as we shall see in Chapter Three of this thesis, the fact that slaves were held legally responsible during criminal trials allowed the court to utilise either the slave code or the penal code in order to arrive at a sentence.

The questions considered by the courts were: had there been an attempted poisoning of Madame Morel? Were Constance and Elisabeth the authors of this crime? Did they act with ‘*discernment*’? I have translated ‘*discernment*’ from French to mean ‘sound judgment’. Other possible translations in this context are; acumen, discrimination, perspicacity or shrewdness. The court of Assizes answered the first two questions in the affirmative.⁵⁹ The final question related to their age. Article 238, paragraph 57 of the Penal Code of 1832 stated that ‘if it is decided that the accused, whom are less than 16 years of age, have acted with sound judgment (*discernment*), the sentences imposed by the law must be modified according to the circumstances’.⁶⁰ English common law’s use of judicial discretion offered judges in British courts a certain flexibility in interpreting legislative provisions assisting in the administration of justice to benefit the individual. Under French civil law jurisdiction, previous judicial decisions had no bearing on future judgments.⁶¹ Constance and Elisabeth were spared

⁵⁸ SRNSW, NRS 1155, 2/8255, Articles 237 and 238 of the *Pénal Code* of 1832, pp. 81–86. The crime of poisoning is stated as a capital offence in *Code Pénal*.

⁵⁹ Article 237: Qualifies poisoning as attack on a life of a person by reason of substances that can cause death more or less promptly in any way that these substances were administered or employed and whatever have been the consequences. Article 238: All guilty of murder (assassination) of parricide, of infanticide or poisoning shall be punished by death. SRNSW NRS 1155, 2/8255, trial summary, Elisabeth Verloppe and Constance Couronne, 24 Sep. 1833, pp. 81–86.

⁶⁰ SRNSW, NRS 1155, 2/8255, trial summary for Elisabeth and Constance, 24 Sep. 1833 pp. 81–86; Jacques-Guy Petit, Nicole Castan, Claude F. Augeron, Michel Pierre and André Zysberg, *Histoires des Galère, Bagnes et Prisons XIIIe-XIXe siècle: introduction à l’histoire pénal de la France*, Bibliothèque Privat Historique, Toulouse, 1991, p. 145.

⁶¹ On the other hand, common law, with its origin in England, allows for a more creative role by the judges. Statutes also apply within the common law but these are ‘mainly for the purpose of codification of the judge-made law and for changing such judge-made rules that are not satisfactory from the point

the death penalty, not because they were deserving of leniency, but because the law in this instance allowed the judge to take into account their very young ages. They were both sentenced to transportation for life; spending the remainder of their lives in the penal colony of New South Wales.⁶²

Constance and Elisabeth were amongst the youngest children ever transported under the British convict system.⁶³ Few children under the age of 14 were ever transported from the British Isles. James Bradley, in creating a ‘portrait of difference’ with regard to the Mauritian convicts, points out that these convicts, and in particular Constance and Elisabeth, were in a ‘minority of a minority of a minority’; in a minority being child convicts from Mauritius; being female; and being black Mauritian-Creole-speaking slaves.⁶⁴ The draconian penalty given to such young children reflects the attitudes regarding the ‘morally repugnant’ crime of poisoning. Poisoning was a tangible form of resistance by a slave whereas the perception of a slave’s ‘trust’ or ‘breach of trust’ was a more elusive concept in a slave society.

A Breach of Trust

Trust became one of the main focal points in the case against Sophie, an 18-year-old Malagasy slave accused of arson and theft. Sophie was a domestic slave belonging to

of view of the Legislator (usually the Parliament)’ Michael Bogdan, *The Law of Mauritius and Seychelles*, Juristforlaget, Lund, 1989, p. 10; Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750, vol. 1, the movement of reform*, Stevens & Sons Limited, London, 1948, p. 295.

⁶² NAM, RA 663, the humble petition of Nereus Verloppe, 4 Jun. 1841.

⁶³ Pybus, ‘Children in Bondage’, pp. 61–76. Deborah Oxley, ‘Female Convicts’, in Stephen Nicolas, ed., *Convict Workers: representing Australia’s past*, Cambridge University Press, Cambridge, 1988, p. 85–97.

⁶⁴ James Bradley, ‘The Colonel and the Slave Girls: life writing and the logic of history in 1830s Sydney’, *Journal of Social History*, vol. 45, no. 2, 2011, p. 421.

medical officer Amédée Bonsergent, living on a property in the district of Rivière du Rempart. Around midnight on 20 March 1823 the sound of exploding bottles of liquor, wine and oil shattered the night and roused with alarm the residents in the house.⁶⁵ The loft was alight. Swift action by neighbours and their slaves, who had heard the emergency bell, contained the damage to the loft. This was the third fire on the Bonsergent property in five months.⁶⁶ When the district's commissioner of police, Andre Mangeot, inspected the loft he concluded that this fire was an act of arson.⁶⁷ Checking the damage to the house the following morning, Bonsergent discovered that a large sum of money, hidden in the master bedroom, was missing. The theft, according to Bonsergent, could only have taken place during the tumultuous evacuation. In her first police interview on 22 March 1823, Sophie suggested that Cesar, another of Bonsergent's slaves of Mozambiquan origin, was responsible for all three fires and the theft.⁶⁸ In police interviews, during trial proceedings and in correspondence, Sophie is referred to as an entrusted slave whose statement carried much credence.⁶⁹ When asked why she had not said anything earlier, her 'silence making her appear guilty', she replied that Cesar had threatened to 'cut her throat' if she talked.⁷⁰ Cesar denied the allegations.

⁶⁵ NAM, JB 152, Court of First Instance, trial records of Sophie, 17 Sep. 1823; TNA, TS 25/2038, letter from the general prosecutor of Mauritius P. Rudelle to the governor of Mauritius Sir Galbraith Lawry Cole, 6 Nov. 1823, pp. 155–156.

⁶⁶ TNA, TS 25/2038, letter from the general prosecutor's office to Colonel Barry, chief secretary to the government, 27 Nov. 1823, pp. 162–163, attached to the general prosecutor's letter were examinations and depositions.

⁶⁷ TNA, TS 25/2038, procedure of the Civil Commissioner of Police Andre Mangeot, 21 Mar. 1823, pp. 162–163.

⁶⁸ TNA, TS25/2038, interview with Sophie, 22 Mar. 1823, pp. 165–166; Sophie is described as being '5'[0] ¼" with a copper coloured complexion, dark hair and eyes, thick lips, broad nose, scar under her right ear', TNA, CO 207/1.

⁶⁹ TNA, TS 25/2038, letter from the general prosecutor of Mauritius P. Rudelle to Cole, 6 Nov. 1823, p. 155.

⁷⁰ TNA, TS 25/2038, interview with Sophie, 22 Mar. 1823, p. 166.

Later statements by other slaves on the property, including Juliette, a young Mauritian Creole, and Nina, a Malagasy, did not corroborate Sophie's allegations that Cesar was the architect behind the fires and the thefts. Confronted with this, she admitted to having climbed up to the loft with Nina and Juliette to steal a bottle of liquor and that the fire had started accidentally when a night lamp was left next to a pile of straw. The pregnant Sophie said she had a craving for liquor.⁷¹ Juliette and Nina denied their involvement. When pressed, Sophie conceded this to be true, but repeated that she went to the loft to steal alcohol, not to start a fire.

Cesar, in his first interview, declared Sophie 'a big fat thief'.⁷² Twice she had given him stolen wine to take to a free woman named Dauphine. Based on this testimony, it is reasonable to assume that Sophie may in fact have been in the loft to steal more alcohol and that the fire was accidental. Juliette, in her second interview, claimed that Sophie had committed two separate thefts of money prior to the last fire on 20 March.⁷³ The thefts had gone unnoticed and Sophie had given the money to Jean Gombault, a free Mauritian Creole she referred to as '*mon marie*' and who was presumably the father of her unborn child.⁷⁴ Gombault later admitted to police that he had received two lots of money from Sophie, corroborating Juliette's testimony.⁷⁵

⁷¹ TNA, TS 25/2038, interview with Sophie, 23 Mar. 1823, p. 172.

⁷² TNA, TS 25/2038, interview with Cesar, 22 Mar. 1823, p. 166.

⁷³ TNA, TS 25/2038, interview with Juliette, Mar. 24 1823, p. 164.

⁷⁴ TNA, PP. XXVI (526), Letters Patent 1723, Article 5 forbid 'manumitted or free born blacks to live in a state of *concubinage* with slaves.' Sophie and Jean did not live together. TNA, TS 25/2038, interview with Sophie, 23 Mar. 1823, p. 165; Pierre Rosario Domingue, 'The Historical Development of the Mixed Legal System of Mauritius during the French and British Colonial Periods', *University of Mauritius Research Journal, (Law, Management and Social Sciences)*, vol. 4, 2002, pp. 72–73. The high cost of obtaining a civil marriage saw most descendants of slaves living in what was called '*concubinage*'. Indian immigrants resorted to religious marriages. Children of these unions were considered illegitimate. According to birth records in Mauritius in 1882, two thirds of all children fell into the category of illegitimacy.

⁷⁵ TNA, TS 25/2038, interview with Jean Gombault, 23 Mar. 1823, p. 158.

Anthony Barker suggests that these types of liaisons, both social and sexual, between a slave and a free Creole are not surprising and they were often more than casual relationships.⁷⁶ Nicole Ulrich points out that in slave societies such ‘unions were not only interracial and multilingual but that families often spanned the enslaved–free divide, and not simply the slave–servant divide.’⁷⁷ Indeed, Gombault had no hesitation in admitting that Sophie was his partner.⁷⁸ Rhoda Reddock writes that, in the Caribbean context, slaves often had nothing but ‘contempt for marriage’, preferring multiple associations.⁷⁹ Slave owners in Mauritius were not in favour of slaves marrying. This was mostly for economic reasons, as marriage potentially meant less control over the lives and labour of their slaves. The belief that slaves had questionable morals also perpetuated the idea that they were less likely to uphold the sanctity of a Christian marriage.⁸⁰ Bonsergent, Sophie’s master, in his doctoral thesis many years later would write that ‘blacks loathe marriage’, and as such, the vestiges of pagan African religions did not fit well with European Christian religious doctrine. Hence, Bonsergent continued, ‘all missionaries regardless of which sect they belonged to never managed to change their inclinations and prevent them from being polygamists’.⁸¹

⁷⁶ Anthony Barker, *Slavery and Antislavery in Mauritius, 1810–33: conflict between economic expansion and humanitarian reform under British rule*, Palgrave Macmillan, Basingstoke, 1996, p. 147.

⁷⁷ Nicole Ulrich, ‘Popular Community in 18th-Century Southern Africa: Family, Fellowship, Alternative Networks, and Mutual Aid at the Cape of Good Hope, 1652–1795’, *Journal of Southern African Studies*, vol. 40, no. 6, p. 1150.

⁷⁸ TNA, TS 25/2038; interview with Jean Gombault, 23 Mar. 1823, pp. 172–173.

⁷⁹ Rhoda Reddock, ‘Women and Slavery in the Caribbean: a feminist perspective’, *Latin American Perspectives*, vol. 12, no. 1, 1985, p. 69.

⁸⁰ Domingue, ‘The Historical Development of the Mixed Legal System of Mauritius’, pp. 72–73.

⁸¹ Amédée Bonsergent, *Observation Médico-Pratiques sur Les Malades qui se Manifestent le plus Fréquemment chez les Noir à L’île Maurice (Afrique), précédés de Considérations générales sur le Traitement des Colons a Leur Egard, du Tableau Véritable de L’Esclavage, des Mœurs, des Habitudes et de la Vie particulière des Noirs dans cette Colonie*. Thèse Présentée et Publiquement Soutenue a la Faculté de Médecine de Montpellier, le 23 Juin, 1837, pour obtenir le Grade de Docteur en Médecine, Montpellier, 1837, p. 18.

Sophie's account of events during many interviews, both before and after her arrest, changed constantly. As time went on, her responses became more and more evasive. Only when presented with irrefutable evidence did she volunteer additional information. Sophie often contradicted her own statements which make it difficult to ascertain the truth. Each time she changed her testimony she swore that she was now 'telling the truth'.⁸²

Closer examination of the court documents reveal that Sophie's indiscretions were not perceived by the courts to be crimes of revenge or resistance, but rather a serious breach of trust. Prior to the Bonsergents' knowledge of Sophie's involvement in the fire in the loft and the thefts of money and alcohol, she had been trusted to carry out the important task of retrieving their most precious objects from the burning house. It is quite possible that Sophie had been the personal child slave of Mademoiselle Françoise Legars prior to her becoming Madame Bonsergent in 1818. It was common for women in slave societies to bring one or several personal slaves with them into a marriage. This would explain the strong focus on the serious breach of trust during the trial. The issue of a breach of trust, as Pybus points out, is however an 'interesting concept in a master-slave relationship'.⁸³

Not recognising the corrosive effects of the power imbalance between slave and slave owner, Madame Bonsergent may have mistakenly believed that a special bond, a reciprocal kinship of sorts, existed between herself and her now-adult slave. Encoded in this mistress/slave relationship, however, was a fragile tension between affection

⁸² TNA, TS 25/2038; interview with Sophie, 23 Mar. 1823, p. 165.

⁸³ Pybus, 'A Touch of the Tar', p. 12.

and exploitation (intimacy and violence). As Patterson points out, slavery's true meaning emphasises a slave's 'namelessness and invisibility, the endless personal violation and chronic inalienable dishonor.'⁸⁴ Margaret Abruzzo suggests that the dichotomy between the enslaver and the enslaved lies in the struggle between the 'attempts to dehumanise' and the fight for the 'essential humanity' innate in a slave.⁸⁵

In slave societies, the colonial home often became a space of quotidian interaction and cross-cultural associations and was often an opportunity for the mistress of the house to stamp her authority over her domestic chattel. The position of the free wife in the household and the tenuous relationship which sometimes existed between a mistress and her female slave could lead to emotions of jealousy, even vengeance, on the part of the mistress towards a slave who transgressed the codes governing mistress/slave behaviour.⁸⁶ Was Sophie's relationship with Jean Gombault and the pregnancy perceived as a betrayal of what Madame Bonsergent perceived to be a special 'relationship'? In the context of another British slave society in the Indian Ocean, Kirsten McKenzie explains that, in the Cape Colony, issues of sexual morality, the promiscuity of female slaves and their inclusion into a white households often led to '[c]oncerns about the sanctity of the respectable home, about the role of women in civilised society, and about cultural contamination in the colonial sphere'.⁸⁷

⁸⁴ Patterson, *Slavery and Social Death*, p. 12.

⁸⁵ Margaret Abruzzo, *Polemical Pain: slavery, cruelty, and the rise of humanitarianism*, The John Hopkins University Press, Baltimore, 2011, p. 12.

⁸⁶ Patterson, *Slavery and Social Death*, p. 175.

⁸⁷ Kirsten McKenzie, *Scandal in the Colonies: Sydney and Cape Town 1820–1850*, Melbourne University Press, Melbourne, 2004, p. 184.

In the end, Sophie admitted to three separate thefts of money to the value of 312 *piastres* (Spanish dollars) and a shawl, but continued to deny starting the first two fires and was adamant that the fire in the loft was an accident. Most of the stolen money was returned to the Bonsergents.⁸⁸ The court carefully considered the evidence relating to the thefts as well as the question of accidental fire versus malicious arson. In September 1823 Sophie was found guilty ‘firstly of simple theft domestique [*sic*] and secondly of the same type of theft committed amidst the confusion of a fire caused by herself’.⁸⁹ Amplified by the serious breach of trust Sophie’s crimes were deemed so heinous that she was sentenced to death.⁹⁰ Jean Gombault was sentenced to eight years in iron for receiving stolen goods.⁹¹ The court acquitted the slaves Sophie had implicated in her crimes.

In Mauritius, the clash between *Code Noir*, a Creole code with its origin in eighteenth-century French metropolitan legal principles and the early nineteenth-century British conceptualisation of humanitarianism drove the debate about the efficacy of corporal punishment. Flogging, as a form of disciplining women in particular, was becoming a topic of great concern in the metropole. Shortly after Sophie’s arrest in March 1823, the Secretary of State for the Colonies (1812-1830) Henry Earl Bathurst, articulated the need to consider legislative change in British slave colonies with regards to the

⁸⁸ Money was recovered from Jean Gombault’s house and Sophie showed police where she had hidden the money she took during the fire in the house—it was hidden in the gable of the stable. TNA, TS 25/2038, interview with Sophie, 23 Mar. 1823, pp. 165–166.

⁸⁹ NAM, JB 152, verdict in the trial of Sophie, 17 Sep. 1823.

⁹⁰ TNA, TS 25/2038; sentenced to death, 17 Sep. 1823, p. 155.

⁹¹ In August 1828, celebrating the anniversary of George IV, Governor Charles Colville cancelled the unexpired term of punishment of 10 prisoners, amongst them Jean Gombault. At this point he had served half his eight-year sentence. In the same year, in New South Wales, John Henry (born 1798), a black whose native place was recorded as the West Indies, applied to marry the Mauritian former slave, Sophie. John Henry had been transported on the Earl St Vincent for horse stealing in Limerick, Ireland, arriving in the penal colony of New South Wales in 1818. His crime carried the sentence of transportation for life. SRNSW, 12212, item 4/4511, application to marry, Sophie and John Henry, 4 Mar. 1828

flogging of women in an attempt to ‘restore to the female slaves that sense of shame which is at once the ornament and the protection of their sex, and which their present mode of punishment has tended unfortunately to weaken if not to obliterate’.⁹² Diana Paton asserts that this was to ‘strengthen slaves’ sense of gender difference’ and invoke a ‘feminine “sense of shame”’ often used in discourses related to female punishment.⁹³ This gendering of penal reform was part of the civilising process within British colonial societies underpinned by gender constructs supported by law. Legislation introduced in 1824 banned the flogging of female slaves.⁹⁴

The disinclination, even hostility of planters to consider new regulations originated in the fact that flogging of both men and women was an important management tool on slave plantations. The legislation introduced in 1824 created disciplinary difficulties on many plantations throughout the British Empire. This change in punishment regime became particularly problematic in slaves societies where the majority of the slaves in field gangs were women.⁹⁵ This reverse gender imbalance forced plantation management to consider other means of controlling the female workforce. In Mauritius this often meant imprisonment, a period in irons or time in the stocks. The period in the stocks was either overnight or for a shorter or longer period in the blazing tropical sun.⁹⁶

⁹² TNA, PP 1824 (003), XXIV, Bathurst to Governors of Colonies Having Local Legislature, May 28, 1823.

⁹³ Diana Paton, *No Bond but the Law: punishment, race, and gender in Jamaican state formation, 1780–1870*, Duke University Press, Durham, 2004, pp. 7 and 88.

⁹⁴ Order in Council of 1824,

⁹⁵ Richard Dunn, ‘The Demographic Contrast between Slave Life in Jamaica and Virginia, 1760-1865’, *Proceedings of the American Philosophical Society* vol. 151, no. 1, 2007, pp. 50-51.

⁹⁶ TNA, PP. 1829. XXV (338), slaves in Mauritius, circular to the commandants and civil commissaries of the districts from Governor Lowry Cole, 15 Dec. 1826, pp. 32–33.

Metropolitan sensibilities largely drove these legislative changes based on the notion that flogging women did not reflect a civilised society. Penelope Edmonds and Hamish Maxwell-Stewart have alluded to the transition away from corporal punishment through the ‘trans-imperial agenda’ of anti-flogging by showcasing the humanitarian sentiments of Quaker missionaries such as James Backhouse. His views mirrored these new sensibilities trending away from corporal punishment, such as flogging, of both slaves and convicts. Backhouse argued against flogging on the grounds that it was unscientific, inefficient, uncivilised, inhumane and unchristian, an abuse of power and an incitement to further violence.⁹⁷

In 1823, the newly formed metropolitan Anti-Slavery Committee had called for the abolition of the institution of slavery, reinforcing these humanitarian sentiments as part of a civilising process. The formation of this committee, coupled with the Demerara slave revolt in the Caribbean in August 1823, intensified the debate about slave emancipation throughout the British Empire. The Mauritian colonial administration, fearful of the powerful French planters, was slow to enter into the abolition debate.⁹⁸ As the anti-slavery movement was gathering momentum in the metropole, the Mauritian plantocracy vehemently defended its right to own slaves.⁹⁹

⁹⁷Penelope Edmonds and Hamish Maxwell-Stewart, “‘The Whip is a Very Contagious Kind of Thing’: Flogging and Humanitarianism reform in penal Australia’, *Journal of Colonialism and Colonial History*, vol. 17, no 1, 2016, DOI: 10.1353/cch 2016.0006, <https://muse.jhu.edu/article/613283>.

⁹⁸ Barker, *Slavery and Antislavery in Mauritius*, 1810–33, p. 153.

⁹⁹ Adrien D’Epinay was the spokesperson for the Mauritian planters. Up until the very end of slavery in Mauritius in 1835, they campaigned for the right to keep slaves. D’Epinay made two trips to London to plead their case. Adrien D’Epinay, *Souvenirs D’Adrien D’Epinay, Extraits relatives à sa seconde mission à Londres en 1833 (Abolition de l’esclavage)*, publiés par son fils P. D’Epinay, Fontainebleau, 1901.

Amidst the growing unease in the colony, the Court of Appeal on 19 September, 1823 heard Sophie's appeal against her death sentence. The idea of inflicting corporal punishment or executing women, mothers in particular, was also becoming offensive to early nineteenth-century sensibilities, both in France and Britain.¹⁰⁰ However, Sophie, at this point, did not benefit from these new metropolitan sensibilities as her death sentence was upheld. General prosecutor, P. Rudelle, immediately set in motion a plea for clemency. How the concept of gender and empire interplayed and converged to formulate change and how various gender perspectives and attitudes shaped the understanding of difference in the Mauritian courts is useful to consider in the context of Rudelle's plea for clemency.

Sophie's death sentence created an interesting tension between the violence of empire and public metropolitan sensibilities. The colonial state's demonisation of a dangerous, morally corrupt, female transgressor of non-European race stood in stark contrast to her white, virtuous, morally respectable metropolitan female counterpart. The death sentence swung the pendulum the other way and the subaltern non-European transgressor crossed the equation from being a 'moral problem' to showing up the colonial court and a callous plantocracy, portraying the extent to which it was out of step with metropolitan sensibilities. From a subject of amorality, deviance and fear, Sophie became a subject of compassion, protection and paternal and public sympathies. Ann Laura Stoler suggests that philosophical and political conversations, whether morality hinged on reason, passion, affections or sound judgment, emerged 'out of historically specific

¹⁰⁰ Capital punishment had, up until the late eighteenth century, 'formed a central core of the penal system.' David Neal, *The Rule of Law in a Penal Colony: law and power in early New South Wales*, Cambridge University Press, Cambridge, 1991, p. 7.

political contexts'.¹⁰¹ Colonial philosophy, including morality, politics, gendered arguments and legal decision making were all woven into a legal narrative presented by Rudelle, giving an insight into the workings of the courts in Mauritius and its gendered perspectives in the first half of the nineteenth century.

To determine the true intent behind Sophie's radical change of behaviour, from a trusted slave carrying her mistress's keys to a convicted thief and arsonist, is difficult. At no point during the police interviews did she clearly state why she committed any of the crimes – other than to satisfy her craving for alcohol. Could it be that the real reason for the theft of money had less to do with acquiring 'petty luxuries', as suggested by Clare Anderson, but rather the natural instincts of a mother to protect her child?¹⁰² Or, were the thefts intended to facilitate her escape from the Bonsergent household, in an act of resistance against her own slave status and the inherited status of her soon-to-be-born child? Baron Grant, who lived in Mauritius for a period of 20 years in the mid-eighteenth century, wrote about the Malagasy slaves in Mauritius:

Many of them, incited by the love of liberty, have retired into the most inaccessible woods and mountains ... many on their desertion, have put to sea in canoes which they have stolen, and have trusted to mercy of the waves in order to regain their native island of Madagascar.¹⁰³

¹⁰¹ Ann Laura Stoler, *Along the Archival Grain: epistemic anxieties and colonial common sense*, Princeton University Press, Princeton, 2009, pp. 67–68.

¹⁰² Clare Anderson, 'Unfree Labour and its Discontents: transportation from Mauritius to Australia 1825–1845', *Australian Studies*, vol. 13, no. 1, 1998, p. 120.

¹⁰³ Baron Grant, *The History of Mauritius, or the Isle de France, and the neighbouring Islands From their First Discovery to the Present Time, Composed Principally from the Papers and Memoirs of Baron Grant, Who Resided Twenty Years in the Island, by his Son, Charles Grant Viscount de Vaux*, London, 1801, p. 77.

Hilary Beckles argues that for slaves, stripped of all human and personal liberties, freedom was the ‘most aggressively pursued, and protected, social commodity’.¹⁰⁴

In his plea for clemency, following the loss of the appeal against the death sentence in the Mauritian Court of Appeal, General Prosecutor Rudelle sent a remarkable letter to the newly appointed and recently arrived governor, Sir Galbraith Lowry Cole. ‘It is my duty your Excellence to present you with the authorities to attenuate if possible the criminal intent of Sophie’, he wrote.¹⁰⁵ Rudelle appealed to the ‘wisdom and humanity’ of the new governor.

You will not approve of the motivation that were presented to you of the intent that she had, intent cannot in this case be wholly sufficient and you might find by reserving your judgment you will commit a good deed.¹⁰⁶

Paternal care for Sophie and her child’s destiny became a key aspect of the Mauritian general prosecutor’s legally constructed argument.

Governor Cole suspended the execution. Rudelle sent the application for clemency, including transcripts of police interviews and other relevant court documents, to the solicitor of the treasury to be submitted to the King’s advocate and attorney and solicitor general in London.¹⁰⁷ The triangular set of powers, the authority of the court, the parliament and the King, representing the colonial notion of paternal authority,

¹⁰⁴ Hilary Beckles ‘Taking Liberties: enslaved women and anti-slavery in the Caribbean’ in Clare Midgley, ed., *Gender and Imperialism*, Manchester University Press Manchester, Manchester, 1998, p. 140.

¹⁰⁵ TNA, TS 25/2038, letter from the general prosecutor’s office to Sir Lowry Cole, 6 Nov. 1823, p. 157.

¹⁰⁶ TNA, TS 25/2038, letter from the general prosecutor’s office to Sir Lowry Cole, 6 Nov. 1823, p. 157.

¹⁰⁷ TNA, TS 25/2038, definitive judgment, 24 Aug. 1824, p. 206.

became integral in deciding Sophie's fate. The legal argument put forward by Rudell was thrown into a whirlpool of contemporary gender interpretations.

Rudelle's understanding of feminine difference, both physical and mental, became crucial to the legal argument. Many of these concepts, deeply embedded in the psyche of imperial ideology, were evident in the general prosecutor's argument. In his letter to Cole, Rudelle acknowledged that the defence he was about to present would not hold up 'against the masses of proof which has been gathered against the Negress, the court confirming a sentence of death as an arsonist'.¹⁰⁸ However, as an 'excuse' he asked, 'is it not possible that her state of pregnancy made this poor creature commit the crimes she committed?'¹⁰⁹ Having enjoyed their 'total confidence' how is it, he asked, 'that all of a sudden she forgets and becomes the most perverse of creatures?'¹¹⁰

He continued:

... after consulting the tract of legal medicine one finds some just motives to doubt the state of reason and sanity which supposedly Sophie was in when she committed these crimes and one may rather think of a principle of humanity, that her state of pregnancy exposed her aberrations and even insanity.¹¹¹

'In any case', he wrote, 'this extraordinary state has at least influenced singularly the nature of her responses and of her confessions and her declarations generally'.

'Medical evidence' suggested that a woman with a 'melancholic temperament', who also had certain physical characteristics, such as the 'diameter of her blood

¹⁰⁸ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, pp. 157–158.

¹⁰⁹ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 157.

¹¹⁰ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, pp. 156–157.

¹¹¹ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 157.

vessels' being smaller than normal, could lead to increased derangement. Sophie's pregnant state, according to Rudelle, had 'changed her nature', and made her 'the most perverse of creatures', conforming to the emerging view of women as feeble-minded, with a sensitive disposition, questionable mental capacity, with no control over their bodies and/or minds amplified by bodily changes such as pregnancy. Pregnant women were also easily 'prone to questionable morals'.¹¹² This trend came to dominate gendered views in the later Victorian era where female moral corruption was replaced with feeble-mindedness, thus fitting into the natural order of female inferiority.¹¹³ Women's weaker nature was in need of protection, leniency and mercy under the umbrella of patriarchy and paternalism.

Perceptions of pregnancy have changed throughout history. The temporal ideological changes of pregnancy from a biological, to a social, to a medical phenomenon have been part of changing social, cultural and political processes about the 'social construction of women's bodies'.¹¹⁴ The power and resources in Sophie's case were in the hands of the general prosecutor. His representation of events and the court process became the vehicle for gendered negotiations. Positioned medically, on the cusp of scientific exploration of both male and female bodies, the female body in particular, led to animated debates about gender in the contemporary public imagination. By providing a contested space, the court in Mauritius became more than just a neutral backdrop in the gender debate. This legal forum actively contributed to

¹¹² TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 157.

¹¹³ Clive Emsley, *Crime and Society in England, 1750–1900*, 3rd edn., Pearson Education Limited, Harlow, 2005, p. 95.

¹¹⁴ Rose Weitz, 'The Social Construction of Women's Bodies', in Rose Weitz, ed., *The Politics of Women's Bodies*, Oxford University Press, New York, 2010, p. 1.

the development of gender relations in the colony and the legally considered responses in the metropole.

The development of the medical profession's medicalisation of human experiences and the authority to define various illnesses and human conditions saw pregnancy also become 'medicalized'.¹¹⁵ Cathy Kohler Riesman emphasises how 'medicine's constructions of reality are related to the structure of power at any given historical period'.¹¹⁶ Robyn Longhurst points to the nineteenth-century belief that not only did pregnancy change the mental state of women but that 'hysteria in women originated in disorders of the womb.'¹¹⁷

In Sophie's case, gender and medical science intersected with law. How to interpret criminal law with regard to pregnant women became the burning question. In early nineteenth-century Mauritius Sophie's pregnancy was therefore viewed in relation to a legally gendered doctrine. Rudelle argued that her criminal behaviour related to her pregnancy and deemed to be a legal medical problem. The argument for medical jurisprudence, based on the general prosecutor's knowledge of medical application to the purposes of law, would affect the civil rights of the individual. In doing so, he managed to create an aura of not only authority, but also 'objectivity' and scientific analysis, relying on a gender-based biological and physiological rationalisation in support of Sophie's criminal behaviour.

¹¹⁵ Cathy Kohler Riessman 'Women and Medicalization: a new perspective', in Rose Weitz, ed., *The Politics of Women's Bodies*, Oxford University Press, New York, 2010, p. 49.

¹¹⁶ Riessman 'Women and Medicalization', p. 53.

¹¹⁷ Hysteria in women was thought to be 'the womb moving around the body and getting too close to the brain'. Robyn Longhurst, *Maternities: gender, bodies and space*, Routledge, London, 2008, p. 162.

The precept of the Faculty of Medicine of Halle in Germany, the cradle of modern medical jurisprudence, dates back to the sixteenth century.¹¹⁸ The theory relied upon by Rudelle in Mauritius was *The System of Medical Jurisprudence*, developed by Michael Alberti (1682–1757) in the early eighteenth century.¹¹⁹ Once consulted by a lawyer, whose pregnant female client was accused of theft, Alberti, a faculty member, was asked, according to Rudelle, ‘to determine if an accused found guilty of theft during a state of pregnancy, can produce in certain women an irresistible urge to commit different excesses, namely the crime in question?’¹²⁰ Alberti had replied:

... that in this area he was not able to respond from a scientific point of view because there exist no individual circumstance relative to the physical or mental reasons other than on the temperament of the accused which could motivate a decision such as this.¹²¹

However, ‘this question considered abstractly may be resolved in an affirmative manner because established reason and experience indicates that pregnancy is susceptible to derange the imagination of women and deprave their free will’.¹²² This reasoning, put forward by Rudelle, did not see her crimes in relation to her status as a slave within a dehumanising system of slavery.

According to French law, the court ordered a suspension of procedure for 40 days to allow for the birth of Sophie’s child. Rudelle, in his letter, referred to several cases in France where the doctor’s inability to establish pregnancy prior to commencement of

¹¹⁸ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 158.

¹¹⁹ Michael Alberti (1682–1757).

<http://users.manchester.edu/FacStaff/SSNaragon/Kant/bio/FullBio/AlbertiM.html>

¹²⁰ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 158.

¹²¹ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 158.

¹²² TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 158.

the trial had affected the outcome. He also cited several examples of pregnant women put on trial who had had their death sentences overturned due to the bodily changes affecting the behaviour of pregnant women. ‘Crime like virtue has its levels’ wrote Rudelle to Cole.¹²³ He continued:

... would we not regret it if we put to death an unfortunate who did not merit such a fate. She is a mother who is breastfeeding a poor creature who is only three months old. Humanity revolts at separating them in such a cruel way only because she seems to be deserving of the penalty.¹²⁴

Sophie had become the object of a series of constructed legal sympathies, a female medical object whose life was at the caprice of paternal sentiments and legal authority both in Mauritius and in the metropole. Slave societies generally cared little for enslaved women as mothers. However, when viewed through the lens of the court and the general prosecutor, motherhood took on a new significance and the colour of Sophie’s skin and her status became irrelevant to the legal argument he was trying to make.

When doubt occurred as to the legality of a foreign legal system in use in British colonial territories expert legal advice was often obtained. In Sophie’s case, a Mr. Lacés was consulted on the matter of French law.¹²⁵ Lacés’s interpretation regarding the rule of French law governing pregnant women deemed the Mauritian judgment valid. However, some confusion as to whether this particular rule of law also applied in Mauritius was to work in Sophie’s favour. James Epstein, in another colonial

¹²³ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 157.

¹²⁴ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, p. 157.

¹²⁵ Keith Hunt, *Sir Lowry Cole, Governor of Mauritius 1823–1828, Governor of the Cape of Good Hope, 1828–1833: a study in colonial administration*, Butterworth & Co (SA) Pty Ltd, London, 1974, p. 25.

theatre, Trinidad, has highlighted the ‘anxieties’ concerning the exercise of British rule using an existing legal system in conquered or ceded colonies. The case of torture against a mulatto woman, Louisa Calderon, saw some questionable and dubious interpretations of Spanish law highlight the pitfalls and contradictions of interpreting foreign legal doctrine by untrained colonial officials. Epstein’s account of the case against Louisa’s perpetrator, Thomas Picton, brings into sharp relief violence and abuse in colonial societies where British officials used unfamiliar legal systems.¹²⁶

The King’s advocate and the attorney and solicitor general considered Rudelle’s plea carefully.¹²⁷ Were British metropolitan legal authorities to overturn the colonial interpretation of French law? The findings in London, dated 23 August 1824, arrived in Mauritius in October that year. The examples of pregnant women before the courts of France put forward by Rudelle in support of Sophie’s plea for leniency were ‘not well founded’ and therefore not considered. The summary conclusion read in part:

We think in a legal sense the act of setting fire to the house may be said to have been maliciously done and it was **intentional** and with a view to robbery. Such we think would be the interpretation by the Law of England and as no objective has been raised with respect to this point we presume the same rule prevails in the Law of France.¹²⁸

However, the King’s advocate and the attorney and solicitor general did not possess the means to ascertain with certainty all the legal facts, in particular the timing of the introduction of certain legislative changes. The summary conclusion stated that it was

¹²⁶ James Epstein, ‘Politics of Colonial Sensation: the trial of Thomas Picton and the case of Louisa Calderon’, *The American Historical Review*, vol. 112, no. 3, 2007, pp. 714- 715. See also James, Epstein, *Scandal of Colonial Rule: power and subversion in the British Atlantic during the age of revolution*, Cambridge University Press, Cambridge, 2012.

¹²⁷ TNA, TS 25/2308, deliberations of the King’s advocate and the attorney and solicitor general in the case of Sophie, 23 Aug. 1824, p. 205.

¹²⁸ TNA, TS 25/2038, the summary conclusion in the case of Sophie, 23 Aug. 1824, pp. 203-207.

important in a ‘case of this nature affecting the life of the prisoner that no mistake in this respect should be made’.¹²⁹ The King’s advocate and the attorney and solicitor general, in consideration of some ‘favourable circumstances’ granted Sophie a royal pardon, conditional on the prisoner being transported to New South Wales for life.¹³⁰ Thus, lack of legal knowledge, the anxious flux of decision makers, humanitarian and legal sympathies and metropolitan sensibilities saw Sophie’s death sentence overturned in line with emerging modern penal practices in the metropole moving away from bodily pain, and in particular the brutal execution of women. As Michel Foucault suggests, ‘[t]he body as the major target of penal repression’ started to disappear in the early nineteenth century.¹³¹

After the King’s advocate and the attorney and solicitor general’s decision was received in Mauritius, the colonial administration eagerly conveyed to London that arrangements were being made to have Sophie transported to New South Wales. The Mauritian administration was less enthusiastic when it came to share this decision with the rest of Mauritian society. As a result, Sophie’s pardon was not made public in the *Government Gazette* of Mauritius, as it was not deemed to be in the interest of the colony. The Mauritian administration felt overturning Sophie’s death sentence could be perceived as benevolence and possibly encourage others to commit similar crimes.¹³² Richard Price explains that there was a big gap between the British public perception of empire, as liberal and humanitarian, and the actual experiences at ‘the

¹²⁹ TNA, TS 25/2038, the summary conclusion in the case of Sophie, 23 Aug. 1824, pp. 203-207.

¹³⁰ NAM, RA 301, document of Royal Pardon for Sophie, Oct. 1824.

¹³¹ Michel Foucault, *Discipline and Punish: the birth of the prison*, Vintage Books, New York, 1995, p. 8.

¹³² NAM, RA 278, letter from Acting General Prosecutor J. M. M. Virieux to G. F. Dick, colonial secretary, Mauritius, 3 Mar. 1825.

frontier’ of empire.’¹³³ Thus, perceptions and distance often shielded the metropolitan population from the realities of violence on the ground in many British colonies.

Partners in Crime

Contemporary discourses suggested that women who committed crimes ‘represented the fundamental perversion of the “natural” woman, subverting both moral and gender codes of society and undermining social order’.¹³⁴ Some of the Mauritian female transportees’ criminal involvement unmasked the role of women engaging in criminal activities as part of a group or gang. Within their sphere of criminality, these women stretched as well as crossed traditional gender boundaries by inventing and negotiating new and different roles, albeit of a criminal nature.

One woman, operating within the masculine sphere of ‘organised crime’ was Joséphine Ally, aged 40. The trial records describe her as a laundress and needlewoman. In the early hours of 17 February 1833, she was arrested with her husband, Marcelin Currac, an *affranchi* (freed slave) and a group of marooned (runaway) male slaves. Earlier that night, a chance arrest of one of the gang members, Charles, who, under questioning admitted to a recent burglary, led police to the location of the runaway slaves. All were in jail before dawn. Consequently, the police were able to put a stop to a series of burglaries committed by this group of maroons in and around Port Louis for more than 15 months. The next day police did a thorough

¹³³ Richard Price, *Making Empire: colonial encounters and the creation of imperial rule in nineteenth-century Africa*, Cambridge University Press, Cambridge, 2008, pp. 9–10.

¹³⁴ Kirsty Reid, ‘Work, Sexuality and Resistance: the convict women of Van Diemen’s Land, 1820–1839’, PhD thesis, University of Edinburgh, 1995, pp. 97–100.

search of the premises in *Rue des Forges*. Stolen items recovered included gold and silver watches, jewelry and gemstones, fine china, furniture, clothing and tools.¹³⁵

Joséphine and Marcelin had been in charge of the ‘nerve centre’ of this very lucrative enterprise.¹³⁶ Charles had explained to police that during the night, equipped with ‘tools of the trade’ (pliers), the maroons would seek out possible targets. They later sold the loot to the couple and shared the profits amongst those who had been out thieving that particular night. Such networks were of heightened concern to the colonial officials because they represented more than criminal activity—they were acts of resistance enabling maroons to survive by helping each other, and they drew non-slaves into collusion with the runaways.¹³⁷

Joséphine’s trial records do not suggest that she joined the marooned slaves on their nightly crime sprees. However, what cannot be denied is her participation in the criminal goings on in the house in *Rue des Forges*. From the way the marooned slaves refer to Joséphine in their statements, it is evident that she wielded considerable power in this domestic space of crime and enterprise and played an important role within the gang of marooned slaves. They all refer to Miss Joséphine’s house; giving the stolen goods to Miss Joséphine; Miss Joséphine hid the stolen items and so on. In Mauritius, her involvement in the distribution of stolen goods is not surprising as many women of colour (*gens de couleur*) were part of trading networks on the island, buying and selling a myriad of goods. Joséphine’s commercial network, however, extended to

¹³⁵ NAM, JB 253, Court of Assizes, trial records of Joséphine, Marcelin and Hypolite, 17 Sep. 1833.

¹³⁶ NAM, JB 253, Court of Assizes, trial records of Joséphine, Marcelin and Hypolite, 17 Sep. 1833.

¹³⁷ Richard Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, pp. 35-54.

dealing in illegally obtained merchandise. When women took on a masculine (criminal) role their behaviour challenged the perceived female powerlessness and the traditional view of women as mostly law-abiding citizens. The examining judge in the case concluded that it was impossible that such a large amount of stolen goods could have been at the premises without the couple's knowledge and involvement.

The female ringleader in another serious criminal case was Simonette, a free Creole from the island of Mahé in the Seychelles, charged with the murder of her former lover.¹³⁸ In the 1830s the Seychelles was a dependency of Mauritius, a British crown colony. It was also under the legal jurisdiction of the Mauritian courts, with Mahé as its administrative hub. Serious criminal cases were transferred to the Court of Assizes in Port Louis.¹³⁹ When a missing person's report was lodged with the local police in Mahé in November 1837, Simonette, a 35-year-old seamstress, a mother of three and separated from her husband, was summoned to the police station. She had recently been in a relationship with René Labroche, the free black Creole, now missing. When Police Officer Savy suggested that her former lover had met with foul play Simonette told Savy that two marooned apprentices, Prosper Lacotte, a Mozambiquan (36) and Figaro Annette (25), a Creole, had murdered René.¹⁴⁰

Following Simonette's allegation Police Officer Savy brought Prosper in for questioning. The apprentice denied any involvement in the murder, instead suggesting that Simonette had killed Labroche. The marooned apprentice then decided to cooperate with the police, saying he knew the location of the body. The justice of the

¹³⁸ NAM, JB, 322, Court of Assizes, trial records of Maria Simonette, 9 Jul. 1839.

¹³⁹ Bogdan, *The Law of Mauritius and Seychelles*, pp. 42–51.

¹⁴⁰ SLNSW, TP 143, Court of Assizes, trial summary of Maria Simonette, 9 Jul. 1837.

peace in Mahé, Guillaume Fressanges, wanted to inspect the scene of the crime and see for himself where they had hidden the body. Accompanying him were his assistant Louis D'offay, Government Medical Officer Pierre Bernard, Police Officer Savy and Prosper. Fressanges also requested the release from prison of Simonette and Lamitié, Simonette's latest lover, who was also in police custody.¹⁴¹ Figaro, the second marooned apprentice, was still on the run. Police apprehended him a few weeks later. From Simonette's hut, where the murder had taken place, Prosper led the procession to the edge of the woods approximately one kilometre from the hut. There they found human bones scattered about. Dr. Bernard was unable to make a complete skeleton of René's gnawed skeletal remains, but he concluded that the bones belonged to a mature male of African descent. An examination of the skull revealed extensive injuries caused by violent and probably repeated blows with a blunt object before death.¹⁴² Following Bernard's examination they buried René's bones on site.

With the mass of evidence stacked against her, there was little doubt in the examining judge's mind that Simonette had been involved in René's murder, either directly or indirectly by covering it up. She had both motive and opportunity. She alone may have plunged the knife through René's heart or hit him over the head with the axe. She may have sought help, as claimed by the two apprentices, to remove the body. Lamitié may have offered to 'help' Simonette to dispose of the troublesome Labroche, although from the start she protested his innocence in an effort to protect him. The two apprentices may have committed the crime but their motive is difficult to establish.

One possibility is that Simonette hired Figaro and Prosper to murder René.

¹⁴¹ Examining Judge Fressanges would later lead the tribunal court hearing with three of the accused present in the court during the witness testimonies.

¹⁴² NAM, JB 322, medical report by Medical Officer Pierre Bernard, 20 Nov. 1837.

All the documentary evidence relating to the murder of Labroche was subsequently sent from the Seychelles to Mauritius. On 11 June 1838, after reviewing the evidence the *Juge d’Instruction* in Port Louis, Mr. Henry Bruneau, charged four people with his murder, including Lamitié. Bruneau concluded that ‘following a plan jointly devised’ by Simonette and her three accomplices to murder Labroche it was ‘orchestrated and executed by the four accused’.¹⁴³ He further concluded that once Labroche was asleep in Simonette’s hut, she ‘introduced her accomplices and took advantage of him being asleep to plunge a large knife into his chest’. The two apprentices then hit the victim over the head with an axe and a pestle. All four had carried their victim to the woods and shared his belongings.

When the case finally came to trial in the Court of Assizes in Port Louis on 9 July 1839 Simonette stood in the dock, alone. Her co-accused, Prosper Lacotte, Figaro Annette and Lamitié had all died during the inquest in the Seychelles. The trial records give no details in relation to their deaths. The court found Simonette guilty. Her crime was deemed so heinous that she was sentenced to death in accordance with Article 222 of the penal code of 1838. The introduction of Article 37 provided an alternative to the death sentence. It stated that if ‘the crime is of a nature that carries the death penalty, the crime could, depending on the circumstance, be substituted by that of transportation or hard labour’.¹⁴⁴ As already discussed in this chapter, the idea of executing women, and mothers in particular, continued to trouble nineteenth-century sensibilities and the courts were reluctant to execute mothers who represented strength and stability. The way mothers behaved, good or bad reflected on society. There was

¹⁴³ NAM, JB 322, summary by examining judge, Henry Bruneau, 21 Jun. 1838.

¹⁴⁴ SLNSW, TP, vol. 143, Court of Assizes, trial summary of Maria Simonette, 9 Jul. 1839; SLNSW, TP, vol. 143, convict description list for ship *Water Witch*, 1839.

considerable interest in the intriguing murder of René Labroche in the Mauritian media. *Le Cernéen*, one of the local newspapers, devoted coverage to the woman implicated in a crime of passion in the Seychelles.¹⁴⁵ Simonette, sentenced to transportation for life to Van Diemen's Land arrived in Hobart on the *Water Witch* in late 1839.¹⁴⁶

Children of Transportees

Of the cohort of 136 convicts transported from Mauritius to the Australian penal colonies 23 men and women reported they had left children behind in Mauritius. Of the 37 children recorded, only one known infant journeyed with his convict parent to the Australian penal colonies.¹⁴⁷ In the Australian conduct records a number of these convicts had their status recorded as single, even though we know from the Mauritian trial records that many had wives and families in the Indian Ocean colony. As few among this cohort of convicts spoke English, the language barrier may partially account for this discrepancy in the recording of children and marital status.

In 1833 Joséphine Ally and Marcelin Currac tried desperately to have their four dependent children looked after. They also had an adult daughter, Marie Estelle, herself a mother of two.¹⁴⁸ After their arrest, a letter dated 18 February 1833, written

¹⁴⁵ *Le Cernéen*, 11 Jul. 1839.

¹⁴⁶ TAHO, CON 16/1, Maria Simonette arrived in Hobart on the *Water Witch* on 19 Dec. 1839. Description list, SLNSW, TP vol. 143, *Water Witch*, 1839.

¹⁴⁷ NAM, JB series 1825–1845, SRNSW, NRS series, RSNSW, SLNSW, TAHO, TP series. Eilin Hordvik, 'A Crime of Passion: murder in the Seychelles', in Lucy Frost and Colette McAlpine, eds, *From the Edges of the Empire: convict women from beyond the British Isles*, Convict Women's Press, Hobart, 2015 pp. 77-89.

¹⁴⁸ NAM, RA 502, letter to Colonial Secretary G. F. Dick from Commissioner of Police John Finnis, 10 Oct. 1833.

on their behalf in the civil jails and signed by Marcelin, reached Chief Commissioner of Police John Finniss. Marcelin and Joséphine urged Finniss to ‘consider the cruel situation’ in which they found themselves. At a loss to provide for their children, they begged the commissioner of police to show compassion and ‘give them any food available’.¹⁴⁹ Finniss refused their request. After her parents’ sentence to transportation to New South Wales for seven years, Marie Estelle agreed to take care of her two older siblings, aged 13 and 14, and place them out to learn trades. The couple then sought permission to take their two youngest children, aged four and 14 months, with them to New South Wales. The local authorities claimed that the children would not be received in New South Wales. Authorisation was therefore denied.¹⁵⁰ The authorities however, suggested that the couple could apply to have the children join them once they arrived in New South Wales.

The colonial administration also refused to authorise a request for payment so Marie Estelle could look after her youngest siblings. Following this refusal she lodged an application on behalf of the children for assistance with the *Caisse de Bienfaisance*. No further correspondence regarding this matter appears in the records.¹⁵¹ Anderson concludes in *Subaltern Lives*, that the ‘utter devastation’ inflicted on family members

¹⁴⁹ NAM, JB 253, letter from Marcelin Currac to Commissioner of Police, John Finniss, 18 Feb. 1833. In his indent Marcelin is listed as cannot read or write. He did however sign his full name in the letter to the chief commissioner of police.

¹⁵⁰ A convict child’s passage was usually free. There must have been other reasons why Joséphine and Marcelin were denied their request.

¹⁵¹ Unfortunately Joséphine, who was pregnant when she arrived in New South Wales on the *Dart* on 31 December 1834, died within a few months of arrival. She most likely died in childbirth. Marcelin went on to have 10 more children in Australia. Eilin Hordvik, ‘Exotic Cargo: convict women transported from Mauritius’, in Lucy Frost and Colette McAlpine, eds, *From the Edges of Empire: convict women from beyond the British Isles*, Convict Women’s Press, Hobart, 2015, pp. 47–51. NAM, JB 253 trial records of Marcelin, Joséphine and Hypolite, 17 Sep. 1833.

of convict transportees are not difficult to envisage.¹⁵² For the children of Joséphine and Marcelin their uncertain and most likely miserable future without parental support must have been utterly distressing for both parents and children. As Emma Christopher writes, children of convicts left behind ‘would be orphaned just as surely as if they [their parents] were being nailed into a wooden box and lowered into the ground’.¹⁵³

There is evidence that family members left behind in Mauritius petitioned and pleaded for sentences to transportation to be overturned. In April 1834 the mother of the free Mauritian Creole jeweller, Charles César, in an impassioned plea for her son to serve his sentence in Mauritius due to illness, was a case where the devastating consequences of transportation on those left behind was plain to see.¹⁵⁴ In an emotional statement, Madame César claimed that the court may as well have given her son the death penalty when sentencing him to transportation to New South Wales.

In another heartbreaking petition submitted in June 1841, Elisabeth Verloppe’s father, Nereus Verloppe, petitioned for his daughter and Constance Couronne to be returned to Mauritius. It was seven years since the slave girls, aged 12 and eight at the time of their offence, had been transported to New South Wales.¹⁵⁵ Verloppe argued that the Mauritian authorities should consider overturning the sentences of the two girls

¹⁵² Anderson, *Subaltern Lives*, p. 189.

¹⁵³ Emma Christopher, *A Merciless Place: the lost story of Britain’s convict disaster in Africa and how it led to the settlement of Australia*, Allan & Unwin, Crows Nest, NSW, 2010, p. 31.

¹⁵⁴ NAM, RC 6, petition of widow César, 23 Apr. 1834.

¹⁵⁵ The records indicate that Elisabeth Verloppe had been sending letters to her father in Port Louis. As no response had been forthcoming, her employer First Police Magistrate Henry C Wilson wrote a letter to the governor of the gaol at Port Louis asking for assistance. NAM, RA 693, letter from Henry C. Wilson to the governor of the gaol in Port Louis, 18 Nov. 1840.

handed down in 1833 ‘on account of the social change which took place in the condition of the slave population’ which had resulted in the ‘maximum of the law’

being handed down by the Crown Officer.¹⁵⁶ In both cases the petitions were unsuccessful, as the Mauritian authorities were loath to intervene in such cases.

Charles César and the two slave girls remained in the Australian penal colony never to see their families again.¹⁵⁷ The only known convict to reunite with his family in Mauritius was Laurent Maingard, a 34-year-old Mauritian Creole wigmaker and barber, transported with Simonette on the *Water Witch* in 1839. He returned to Mauritius in December 1853, having spent 14 years in the penal colonies.¹⁵⁸

When the authorities in the Seychelles sent Simonette to stand trial in Mauritius, her three daughters stayed behind with other family members.¹⁵⁹ Two of Simonette’s three children, 13-year-old Pauline and seven-year-old Marie Jeanne had both given statements regarding the murder of Labroche.¹⁶⁰

Discrepancies in the convict records in Van Diemen’s Land are evident when compared with the trial records in Mauritius. The Mauritian female transportee,

¹⁵⁶ NAM, RA 663, the humble petition of Nereus Verloppe, 4 Jun. 1841.

¹⁵⁷ For the story of the two slave girls’ lives in New South Wales, refer to Pybus, ‘Children in Bondage’, pp. 61–76. See also Bradley and Pybus, *From Slavery to Servitude*, pp. 29–50.

¹⁵⁸ NAM, JB 302, trial of Laurent Maingard, 23 Sep. 1839; SRNSW, NRS 115/2/8266, Court of Assizes, trial summary for Etienne, Pierre Louis, L’Esperance, Laurent Maingard, 23 Sep. 1839, pp. 281–287; Edward Duyker, *Of the Star and the Key, Mauritius: Mauritians and Australians*, Australian Mauritian Research Group, New South Wales, 1988, p. 38.

¹⁵⁹ Simonette gave birth to two children in Van Diemen’s Land. On 31 December 1841 when all convicts in the colony were mustered, Simonette was in the ‘House of Correction’ not as a punishment but because she was pregnant. On 6 May 1842 she gave birth to a daughter. RGD, 33 1842/831, Register of birth, Hobart, Dolphinia Mary Ann, 6 May, 1842. In 1845 Dolphinia Mary Ann was transferred to the Queen’s Orphan School in New Town where she died from ‘inflammation of the heart case’ in May 1847. SWD 28, register of children admitted to the Female Orphan School, Hobart. Simonette gave birth to a stillborn son in March, 1848. There were some questions raised with regards to the boy’s death, possibly as a result of her murder conviction in the Seychelles and perhaps also because she was a ‘women of colour’. The subsequent inquest, reported in the Hobart Town Courier, 29 March, 1848, concluded that the child was stillborn. Muster, TAHO, AJCP, HO 10/5.

¹⁶⁰ NAM, JB 322, Court of Assizes, trial records of Maria Simonette, 9 Jul. 1839.

Christine (alias Justine), a 60-year-old native of Mozambique, is an example of the need to be mindful of the language barrier and the accuracy of many of the personal details of non-English speaking convicts.¹⁶¹ The Mauritian records state that she was a mother of six adult children. Three of her children gave statements to police in connection with the case of arson against their mother.¹⁶² In the Australian records, the column ‘married or single’ is blank and the column for naming relatives says ‘no relations’.¹⁶³

New evidence and further research into Sophie’s trial and the circumstances surrounding the birth of her child in prison suggest that Anderson’s timeline in *Subaltern Lives* needs revision.¹⁶⁴ According to French law, the court postponed the trial for 40 days in order for Sophie’s child to be born.¹⁶⁵ Had the court proceeded without delay and a conviction obtained prior to Sophie giving birth the child would technically have been born free. As Hamish Maxwell-Stewart explains, the ‘unfreedom’ of the convict was not ‘passed through the genes’ to their offspring, as was the case with slaves.¹⁶⁶ However, Sophie was still a slave when she gave birth and her male child was delivered from what Beckles calls an ‘enchained womb’.¹⁶⁷ Still an enslaved mother, Sophie’s master was able to lay claim to the child as his property. Slavery, gendered in its function and design, saw the status of a child born to a female

¹⁶¹ Indent TAHO, CON 16/1/5, Christine, (alias Justine).

¹⁶² SLNSW, DLADD 540/38-42, Court of Assizes, trial summary, Christine (alias Justine), 27 Nov. 1843, pp. 57–61.

¹⁶³ Indent TAHO, CON 16/1/5, Christine, (alias Justine).

¹⁶⁴ Anderson, *Subaltern Lives*, pp. 76–77.

¹⁶⁵ TNA, TS 25/2038, letter from Rudelle to Cole, 6 Nov. 1823, pp. 155–156.

¹⁶⁶ Hamish Maxwell-Stewart, “‘Like Poor Galley Slaves...’: slavery and convict transportation’ in Maria Suzette Fernandes Dias, ed., *Legacies of Slavery: comparative perspectives*, Cambridge Scholars Publishing, Newcastle, 2007, p. 49.

¹⁶⁷ Beckles, ‘Taking Liberties: enslaved women and anti-slavery in the Caribbean’, p. 140.

slave predetermined by the status of the mother.¹⁶⁸ As Kathleen Wilson points out, slavery ‘reversed the custom of male lineage typical of British law’.¹⁶⁹ The status of Jean Gombault, a free Mauritian Creole and father of the child, was therefore of no consequence.¹⁷⁰ Only after the recorded conviction of arson and theft did Sophie’s status change from a slave to a convict. Her child’s status remained that of a slave.¹⁷¹

The Bonsergents, following the fire and theft, had ‘denounced’ both their slave and her unborn child. Nevertheless, they wanted to recoup their losses and asked for 300 *piastres* (Spanish dollars) in compensation for the loss of their property, including the child.¹⁷² Surprisingly, Sophie’s race and her slave status was only ever mentioned in the legal correspondence relating to the Bonsergents’ claim for compensation. The average price for a female slave at the time was around 250 *piastres*. Negotiations between Bonsergent and the local government in the end settled on the sum of 80 *piastres* (including the child), which was the price fixed for a male slave in similar circumstances, substantially less than the open market price.¹⁷³ The Mauritian authorities were not prepared to pay extra for Sophie’s son.

¹⁶⁸ NSW, BDM, 477/1833, V18333477 17, registration of birth, Sophia Emma Henry. Sophie’s second child, Emma Henry was born in New South Wales in June 1833. As Sophie was now a convict, Emma was born free. Beckles, ‘Taking Liberties: Enslaved women and anti-slavery in the Caribbean’, p. 139.

¹⁶⁹ Kathleen Wilson, ‘Empire, Gender, and Modernity in the Eighteenth Century’, in Philippa Levine, ed., *Gender and Empire*, Oxford University Press, Oxford, 2004, p. 15.

¹⁷⁰ Hamish Maxwell-Stewart, *World Heritage Serial Nomination for Australian Convict Sites*, Consultant’s Report for the Department of Environment and Heritage, Canberra, 2006, p. 3

¹⁷¹ TNA, PP. 1828. XXVI (526) Slaves in Mauritius, (*Code Noir*), Letters Patent of 1723, Article 9, p. 13, ‘In order, that if a Slave husband has married a free woman, the male or female children shall follow the condition of the mother, and be free like herself notwithstanding the servitude of the father, and that if the father is free and the mother a Slave, the children shall be Slaves like the latter’.

¹⁷² NAM, RA 221, letter from General Prosecutor Rudelle to Colonel Barry, secretary in chief to the government, 30 Dec. 1823.

¹⁷³ TNA, PP. 1828. XXVI (526), Slaves in Mauritius, (*Code Noir*) Article 35 of the Letter Patent of 1723 stated that ‘The Slave condemned to death upon the denunciation of his master, who may not be an accomplice in the crime, shall be valued before the execution by two of the principle inhabitants to be appointed for that purpose by the judge, and the price of the estimation shall be paid to meet which payment there shall be imposed by the Councils each within its jurisdiction, and the Directors of the

As a slave, Sophie was subject to *Code Noir*. Article 42 of the *Code* prohibited the separation of families or a female slave from her child or children, if they had the same owner, but this was not always easy to police.¹⁷⁴ The legal protection under British slave law in the Caribbean, as Barbara Bush explains ignored blood ties among the slave population and thus offered less protection of slave families (at least on paper) than the French and Spanish slave codes.¹⁷⁵ When Sophie became a convict, *Code Noir*, which purported to safeguard the bond between mother and child, no longer applied. There was now nothing to stop the authorities from separating them. The value of a slave child meant that economic factors and the potential source of labour extracted from the child as he or she grew far outweighed the human bond between mother and child. According to Richard Allen, Mauritius experienced a net decline in its slave population throughout the eighteenth and early nineteenth centuries and slave children became an important part of the future labour pool.¹⁷⁶

Sophie was the first Mauritian convict, male or female, tried and convicted in the Mauritian civil courts to be transported to the Australian penal colonies, arriving in Sydney on 30 June 1825.¹⁷⁷ Some weeks earlier she had embarked on the brig *Anne* to commence the journey from Port Louis, Mauritius to New South Wales. On board with her was her son, Jean, born into slavery in prison in August 1823. He had spent his entire short life in a place not conducive to thriving babies but had miraculously

Company, upon every head of Slave, the sum borne in the estimation, which is to be fixed upon each of the said Slaves, and levied by the persons appointed for that purpose.' A person appointed by Bonsergent gave an estimated value of the slave Sophie and her child. Their combined worth was set at 300 *piastres*.

¹⁷⁴ TNA, PP., 1828. XXVI (526) Slaves in Mauritius, Letters Patent, Dec.1723, Article 42, p. 17.

¹⁷⁵ Bush, *Slave Women in Caribbean Society, 1650–1838*, p. 27.

¹⁷⁶ Richard Allen, 'A Traffic of Several Nations: The Mauritian Slave Trade, 1721–1835', in Vijayalakshmi Teelock and Edward Alpers, eds, *History, Memory and Identity*, Nelson Mandela Centre for African Culture and the University of Mauritius, Reduit, 2001, pp. 161–162.

¹⁷⁷ SRNSW, COD 6; CO 207/1, p. 110, Indent, *Anne*.

survived. Bonsergent had not claimed the right to the child and Jean was now free to sail across the Indian Ocean with his mother. Jean was escaping slavery, but at their penal destination he would be tainted by the crimes committed by his convict mother. The fact that Sophie's child is not mentioned in the ship's documents is not uncommon. This was often true of the children transported with their convict mothers to the Australian penal colonies. The fact that the Bonsergents had denounced Sophie and her offspring and that General Prosecutor Rudelle had emphasised Sophie's role as a mother may have swayed the Mauritian authorities in this instance, allowing Sophie to bring her young child on the journey to New South Wales.¹⁷⁸ Sophie's son is the only known child to have followed a parent/s to the Australian penal colonies from Mauritius.¹⁷⁹

Conclusion

Female criminal behaviour should not be viewed as timeless or static. Rather, as with male criminality, the manner in which female criminals were dealt with by prosecutors, the court and state is indicative of wider social, economic, political and judicial changes. Competing gendered visions of masculinity and femininity influenced decisions and projections of culture and shaped ideals and values in the colonies as well as in the British metropole. The women transported from Mauritius to the Australian penal colonies of New South Wales and Van Diemen's Land between

¹⁷⁸ Rudelle unfortunately died in 1824. Hopefully before he died he was aware that the authorities had allowed Sophie to bring her child with her on the voyage to New South Wales.

¹⁷⁹ Sophie married John Henry, also an ex-slave from British Guiana, in March 1828. They had a daughter, Sophia Emma Henry, born in June 1833. John (Jean) Henry (Sophie's son from Mauritius) was baptised with his sister in the church of St James in Sydney in September 1833. SRNSW, 12212, item 4/4511, application to marry; registration of birth, 477/1833, V1833477 17 Sophia Emma Henry; BDM 511/1833, V1833511 17; early church baptism record for John Henry; 510/1824 V1824510 17. For more on Sophie's life in Australia and other transported females from Mauritius see Hordvik, 'Exotic Cargo', pp. 35–60.

1825 and 1845 reflect many of this tiny island's colonial experiences in a complex layering of ethnicities, cultures, languages and religions. The personal narratives of this small group of women offer snapshots of fragmented lives in multiple locations and circumstances: forcible removal from native African villages as part of the slave trade; signing labour contracts in Indian ports as part of the experimental Mauritian labour migration scheme; transference by order of the court in the Seychelles to stand trial in Port Louis as part of legal processes and the legal consequences of being born into the institution of slavery.

The spectre of the female criminal in the colonies reverberated in the social imagination and in social spaces acting as 'exact historical barometers of historical progresses'.¹⁸⁰ For a time these women, all sentenced to transportation, called Mauritius home. The stories of their convict lives begin in a nineteenth-century colonial society where debates about crime and punishment, slavery and abolition, labour migration, economic advancement and imperial progress were among the most important and contested discourses occupying the British Empire. Those who had hoped that the British conquest of *Isle de France* in 1810 would usher in change and a fairer and more equitable society would be sorely disappointed. The French-Mauritian colonists had in fact negotiated a status quo by signing the Capitulation Proclamation. For the population at large, however, both slave and free non-European, many 'travesties of justice' would befall them over the ensuing decades.¹⁸¹

¹⁸⁰ Wilson, *The Island Race*, p. 23.

¹⁸¹ Marina Carter, M. S. Hall, Vishwanaden Govinden, R. Ramasawmy, E. Richon, *Kaleidoscopic Conquest: Mauritius –1810*, Centre for Research on Indian Ocean Societies, Mauritius, 2010, p. 4.

CHAPTER 3

Plus ça change ... The more things change: the third colonial ruler

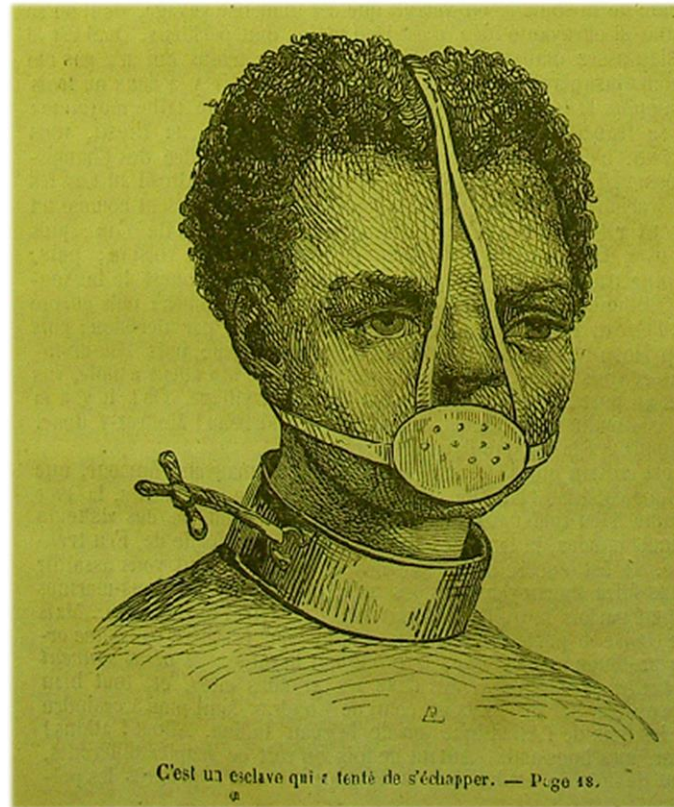


Figure 5 Illustration of a Mauritian slave who had tried to run away: NLA, MAUR 1249, Jacques Arago, *Souvenirs d'un Aveugle: voyage autour du monde*, Paris, [18..].

From time immemorial, among people of all nations, when one wants to express extreme misfortune or fatigue experienced by European farmers one commonly say that they are miserable or that they work like Negroes, because it is generally thought that there is a no more demeaning position than that of the negroes in the Colonies, who are burdened both by excessive work and bad treatment. Luck was on my side as I was able to acknowledge how wrong this very old saying is.¹

¹ Amédée Bonsergent, *Observation Médico-Pratiques sur Les Malades qui se Manifestent le plus Fréquemment chez les Noir à L'île Maurice (Afrique), précédés de Considérations générales sur le Traitement des Colons à Leur Egard, du Tableau Véritable de L'Esclavage, des Mœurs, des Habitudes et de la Vie particulière des Noirs dans cette Colonie*. Thèse Présentée et Publiquement Soutenue à la Faculté de Médecine de Montpellier, le 23 Juin, 1837, pour obtenir le Grade de Docteur en Médecine,

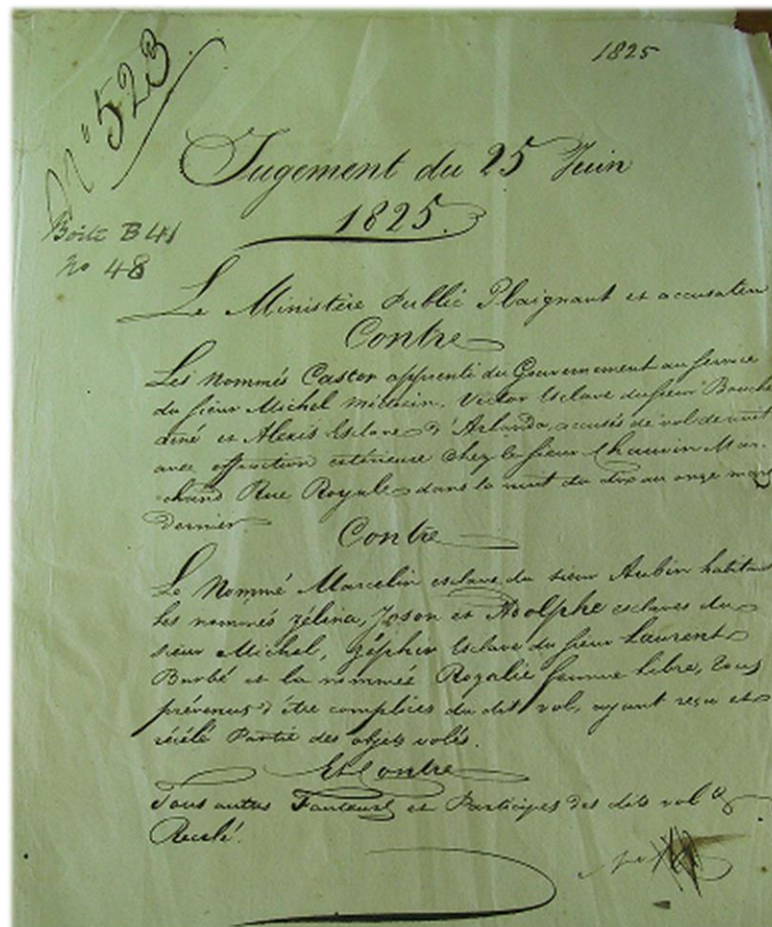


Figure 6 Trial records for Castor, Victor, Alexis and Marcelin: NAM, JB 171, Jun. 1825.

Introduction

The British annexation of the French slave colony of Mauritius in 1810 created resentment and antagonism towards the new imperial ruler and set the scene for political and social confrontations. The intimate relationship with France had given the Mauritian colonists their cultural, religious, political and judicial identity and their loyalty to France was strong.² In Mauritius, slavery had been part of the social and economic fabric since its inception. By the end of the eighteenth century, both in London and Paris, the legitimacy of the slave trade based on its conceptualisation as a

Montpellier, 1837, p. 5 ; A big thank you to Dr. Vijaya Teelock, University of Mauritius, for sharing this wonderful primary source document.

² Megan Vaughan, 'Slavery and Colonial Identity in Eighteenth-Century Mauritius', *Royal Historical Society*, vol. 8, 1998, p. 194.

commercial venture was called into question.³ The pro-slavery Mauritians' first major conflict with the new colonial ruler was over their flourishing slave trade which ran counter to the recently introduced British Slave Trade Act, imposed throughout the British Empire in 1807. The opposing attitudes to the slave trade became symbolic of many of the divergences between the French-Mauritian elite and the new colonial ruler.

The disagreement over the slave trade was the first serious test of wills between the coloniser and the colonised in Mauritius. This chapter will explore to what extent the British were successful in enforcing the British Slave Trade Act of 1807. During the 1820s and 1830s, prior to the abolition of slavery, Mauritian judges endeavoured to reduce the severity of the crimes attached to the French *Code Noir*. This chapter will examine how the Mauritian courts at times took a more constrained approach when sentencing slaves by replacing the Mauritian slave code with the French civil penal code in order to arrive at less brutal punishments. In Mauritius, members of the judiciary were also slave owners. Increasingly uncomfortable with this practice, the metropole introduced new legislation in the early 1830s which denied serving court officials the right to own slaves. This thesis will discuss the impact and the practical outcomes of this legislation on the legal fraternity.

³ In 1794, during the French Revolution, the new revolutionary government abolished slavery. Predictably, the Mauritian plantocracy fiercely opposed this legislation. Even contemporary France considered Mauritius a rebel colony. Geographical remoteness was on the side of the planters and ongoing wars in Europe prevented the French government from imposing the act. Rivière, *Historical Dictionary of Mauritius: African Historical Dictionaries no., 34*, Scarecrow Press, London, 1982, pp. 50–51.

Intra-colonial convict transportation between colonial outposts in the Indian Ocean and to Australia commenced after 1810. In the Mauritian civil courts, convicts were sentenced to transportation to other British colonies from 1825. At the same time the philosophical debate concerning the viability of convict transportation as an effective deterrent to crime were taking place in the metropole. This chapter will argue that the introduction of intra-colonial convict transportation in slave societies such as Mauritius was not an outmoded form of punishment but a legitimate and effective deterrent to crime. Finally, this chapter explores the humanitarian and moral discourses attached to slavery and the attempted ideological overlap of the institution of slavery with that of the prison system.

Mauritian *Mentalité*: The British Slave Trade Act of 1807

The French-Mauritian planters relied heavily on the seaborne slave trade to obtain a constant supply of labour, as the slave mortality rate in Mauritius usually exceeded the birth rate.⁴ However, as one of its newly acquired colonies, Britain expected Mauritius to comply with the British Slave Trade Act of 1807. The British found the French-Mauritian plantocracy's threat of economic lockdown or a mass exodus, if an exemption was not granted, objectionable. The British metropole perceived this fierce opposition and threats as tantamount to 'economic blackmail'.⁵ Fearing social unrest and economic instability, the first British Governor of Mauritius, Robert Farquhar

⁴ Richard Allen, *Slaves, Freedmen, and Indentured Labourers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, p. 15. Critics of the Mauritian slave trade, such as Thomas Buxton, suggested that the then governor of Mauritius Robert Farquhar had misrepresented the slave numbers because if his figures were correct 'every enslaved woman on Mauritius would have had to have given birth to 180 children.' Thomas Fowell Buxton, 'Working to the End of Slavery', in *History's Heroes*, East of England Broadband Network, [www.http://historyheroes.e2bn.org/hero/4259](http://historyheroes.e2bn.org/hero/4259).

⁵ Sydney Selvon, *A New Comprehensive History of Mauritius: from the beginning to this day, vol. 1: from ancient times to the birth of parliament*, Selvon, Mauritius, 2012, p. 246; Vaughan, 'Slavery and Colonial Identity in Eighteenth-Century Mauritius', p. 194.

(1810–17 and 1820–23) was reluctant to confront the Mauritian plantocracy. In the metropole, on the other hand, the government pressed on. In no uncertain terms the British informed the French-Mauritians that the Proclamation Declaration of 5 December 1810 did not extend to the slave trade.⁶ The requested exemption was denied. The end to legal slave trading came into effect in 1811 and enforced from 1813.

The close geographical proximity to traditional slave markets in Mozambique and Madagascar considerably complicated the task of enforcing the Slave Trade Act in the years after British annexation.⁷ A small fleet of British naval ships patrolled the southwestern Indian Ocean to police the slave trade, but limited resources and tropical weather patterns made this task difficult. The irony of the British Navy now ‘policing’ the abolition of the slave trade was not lost on the French-Mauritians.⁸ The French colonists sabotaged the legislation at every turn. Conservatively estimated more than 50,000 illegal slaves landed in Mauritius between 1811 and 1828.⁹ The difficulty in putting an end to the slave trade is highlighted by the estimated 160,000 slaves believed to have been recaptured and reassigned to British colonial territories between

⁶ Anthony Barker, ‘Distorting the Record of Slavery and Abolition: the British anti-slavery movement and Mauritius, 1826–1838’, *Slavery and Abolition*, vol. 14, no. 3, 1993 p. 187; Richard Allen, ‘Capital, Illegal Slaves, Indentured Labourers and the Creation of the Sugar Plantation Economy in Mauritius, 1810–1860’, *Journal of Imperial and Commonwealth History*, vol. 36, no. 2, 2008, p. 153.

⁷ The majority of illegal slaves introduced into Mauritius between 1811 and 1826 came from Madagascar and a smaller percentage from East Africa. Marina Carter, Vishwanaden Govinden and Satyendra Peerthum, *The Last Slaves: liberated Africans in 19th century Mauritius*, Centre for Research on Indian Ocean Societies, Port Louis, 2003, p. 25.

⁸ Anthony Page, *Britain and the Seventy Years War, 1744–1815: enlightenment, revolution and empire*, Palgrave, London, 2015, p. 206.

⁹ After 1821, the illegal slave trade went totally underground. For more on this illegal trade see Richard Allen, *European Slave Trading in the Indian Ocean, 1500–1850*, Ohio University Press, Athens, 2014; Richard Allen, ‘Suppressing a Nefarious Traffic: Britain and the abolition of slave trading’, *William and Mary Quarterly*, vol. 66, no. 4, 2009, pp. 873–894; Richard Allen, ‘Licentious and Unbridled Proceedings: the illegal slave trade to Mauritius and the Seychelles during the early nineteenth century’, *Journal of African Studies*, vol. 42, no. 1, 2001, pp. 99–116; Gwyn Campbell, ‘Madagascar and the slave trade, 1810–1895’, *Journal of African History*, vol. 22, no. 2, 1981, pp. 203–227.

1810 and 1864.¹⁰ These slaves were mostly taken from French, Portuguese, Spanish and United States slave ships operating in the Indian Ocean long after the British managed to stop the slave trade in its own colonies.

The level of political appetite to enforce the Slave Trade Act has been a contentious point in Mauritian history. The two representatives of the Commission of Eastern Inquiry, William Colebrooke and William Blair, in their report following their stay on the island (1826–1828), were scathing in their general assessment of the illegal slave trade and the abject failure of the colonial administration to curtail it.¹¹ Zoë Ludlow emphasises that this commission had been ‘primarily formed to raise public and parliamentary awareness of imperial atrocities, particularly relating to slavery, while emphasising reform rather than revolution as a means of redressing such wrongs’¹²

While mindful of their brief, the frustrated commissioners listed a host of innovative ways in which the slave trade had been allowed to continue. Some of the tactics employed were delaying search warrants; altering or falsifying registers and other documents; collusion by local fishermen and other locals to land slaves in Mauritius and the local police turning a blind eye.¹³ The scale of the illicit slave trade was obvious long after the Slave Trade Act had been introduced, evidenced by the large

¹⁰ Monica Schuler, ‘Liberated Africans in Nineteenth-Century Guiana’, in Brian Moore, B. W. Higman, Carl Campbell and Patrick Bryan, eds, *Slavery, Freedom and Gender: the dynamic of Caribbean society*, University of West Indies Press, Kingston, 2001, p. 134.

¹¹ NAM, IB 20/7-12, report of the commissioners of eastern inquiry upon the slave trade at Mauritius, 1 Jun. 1829

¹² Zoë Ludlow, ‘Investigating Empire: Humanitarians, Reform and the Commission of Eastern Inquiry’, *The Journal of Imperial and Commonwealth History*, vol. 40, no. 5, 2012, p. 749.

¹³ NAM, IB 20, evidence from the commissioners of eastern inquiry, William Colebrooke and William Blair, 1 Jun. 1829.

number of slaves unable to speak the Mauritian Creole language or who seemed ignorant of Mauritian culture and customs.¹⁴

When the commissioners investigated the illegal slave trade, the low conviction rate also caught their attention. Figures for the period 15 September 1815 to 6 September 1827 in *The Abstract of the Return Cases of the Alleged Breach of the Slave Act Abolition Laws entered and tried before the Instance Court of the Vice Admiralty of Mauritius* show 90 prosecutions involving 34 ships illegally importing 2,629 slaves. These prosecutions resulted in 23 convictions. Penalties incurred, to the tune of £124,000, included the confiscation of three ships.¹⁵ The commissioners wrote in their report:

... that to prevent the renewal of the slave trade, we are disposed in a greater degree to rely upon the severity of the law and its strict enforcement against all offenders, than upon measures of prevention in spirit of the French code, which consist in the enforcement of complicated forms which are tardy and often vexatious in their operation and which, notwithstanding the integrity of the chief officers, are liable to be evaded or misapplied through the corruption and connivance of the numerous subordinate agents, often in the interest of the parties who must necessarily be employed for their execution.¹⁶

The commission was exasperated by the local colonial administration's inability to enforce the Slave Trade Act and the obvious collusion between 'interested parties'.

¹⁴ A. F. Fokeer, 'The Negroes in Mauritius', *Journal of Negro History*, vol. 7, no. 2, 1922, pp. 201-202. Sydney Selvon alludes to another flow of illegal slaves into Mauritius. Slavers would land illegal slaves in the Seychelles where they were set to work for French and Creole masters. Later, under the pretence of enslavement prior to the ban on the slave trade, these slaves arrived legally in Mauritius. Selvon, *A New Comprehensive History of Mauritius*, p. 260.

¹⁵ NAM, IB 20, evidence from the commissioners of eastern inquiry, *The Abstract of the Return Cases of the Alleged Breach of the Slave Act Abolition Laws Entered and Tried before the Instance Court of the Vice Admiralty of Mauritius between 15 September 1815 and 6 September 1827*.

¹⁶ NAM, IB 20, evidence from the commissioners of eastern inquiry William Colebrooke and William Blair, 1 Jun. 1829, pp. 43-44.

Granted, the French desperately sought to retain their right to enforce French law in support of a continued slave trade. The metropole wished to introduce legislation to fall in line with British law.¹⁷ This stalemate, not helped by Governor Farquhar's unwillingness to antagonise the planters, in turn compromised the new legislation governing the oceanic slave trade.¹⁸ Farquhar argued that the Act ran contrary to assurances made under the Capitulation Proclamation of 1810, which clearly stated that the Mauritians were to retain their existing institutions. His conciliatory approach interpreted this to include the institution of slavery, an integral part of the island's social and economic fabric. This political jockeying came to characterise the tenure of Governor Farquhar and some of his successors, in particular Sir Galbraith Lowry Cole and Sir Charles Colville, thought to have had vested interests in plantation mortgages.¹⁹ However, by the end of the second decade of British rule in Mauritius the illegal slave trade had almost ceased as planters were looking at legal ways to procure labour, mostly from India.

Legal Experimentation

One of the many slaves recaptured by the British Navy and transferred to Mauritius or seized once on shore was a Malagasy slave named Castor.²⁰ The crown immediately claimed these illegal slaves and handed them over to the collector of customs. They

¹⁷ NAM, RA 278, letter from Acting General Prosecutor J. M. M. Virieux to colonial secretary of Mauritius G. F. Dick, 3 Mar. 1825.

¹⁸ In the *Anti-slavery Monthly Reporter* of July 1829 there was a scathing attack on the Mauritian administration under Robert Farquhar and its failure to stamp out the worst excesses of the slave laws, listing some of the most abusive articles of the *Code Noir* regarding flogging, mutilation and the death penalty. *Anti-Slavery Monthly Reporter*, Jul. 1829, no. 2, vol. III, p. 23.

¹⁹ Deryk Scarr, *Slaving and Slavery in the Indian Ocean*, Macmillan Press, Basingstoke, 1998, p. 181. Governors Hall and Darling introduced more draconian regulation in an effort to stop the illegal slave trade but these measures only lasted for the term of their governorship.

²⁰ SRNSW, NRS 1155, 2/8261, Court of First Instance, trial summary for Castor, 30 Nov. 1821 pp. 217–231.

subsequently came under the supervision of the Mauritian governor.²¹ Once under British supervision they were legally free and known as ‘government apprentices’ or ‘Prize Negroes’. In Castor’s case the early trial records do not indicate exactly when he arrived in Mauritius, however, he first appeared in the criminal court in February 1821 charged with receiving stolen goods from a burglary at the house of Madame Warnet.²² His co-accused, slaves Alexis, Fidèle and Charles, were all charged with the break-in at the same house, but faced additional charges of theft dating back to December 1820, including the theft of a goat from Marie Rabeau. Castor confessed to receiving some silver spoons with the hallmark of Warnet, knowing they were the proceeds of theft. Found guilty, he was sentenced to ‘be kept in jail for two years’.²³ Government apprentices represented an ‘uncreolised presence’ within the Mauritian community, and this group often found it difficult to adjust to their new life in the colony and many died before completing their 14-year apprenticeship.²⁴

Castor’s co-accused in 1821 were initially charged according to the Letters Patent of 1723, a version of the French *Code Noir*. Found guilty, they were sentenced according to Article 28 of the Slave Code which stated that specific ‘robberies, even of horses, mares, mules, oxen or cows, made by the Slaves or manumitted blacks, shall be punished with corporal punishment, even by death, should the case require

²¹ NAM, IB 20, Order-in-Council, 16 Mar. 1808. In Mauritius this order applied from 1813.

²² SRNSW, NRS 1155, 2/8261, Court of First Instance, trial summary of Castor, 30 Nov. 1821, pp. 217–231. However, in 1825, when Castor again was arrested he told the investigating judge Barthélémy Colin he had only been in the colony for a few years. SRNSW, NRS 1155, 2/8261, interview with Castor 18 Mar. 1825, pp. 207–209.

²³ SRNSW, NRS 1155, 2/8261, Court of First Instance, Castor, trial summary, 30 Nov. 1821 pp. 217–231.

²⁴ Carter, Govinden, and Peerthum, *The Last Slaves*, pp. 40 and 70. It is interesting to note that the term of apprenticeship for 14 years was equal to the popular term of transportation for 14 years for a range of crimes committed in Britain and in the colonies.

it.²⁵ In the eighteenth and very early nineteenth centuries these slaves could have expected gruesome punishments. The death penalty was available within the law as well as bodily mutilation, such as branding (often with the symbol of the *fleur de lis*) or the removal of ears and cutting hamstrings or Achilles tendons to stop slaves from running away.²⁶ Castor's co-accused were neither branded nor mutilated. They were 'condemned to be attached to convict chains for a period of ten years, at which time they shall be returned to their masters'.²⁷ In a surprising move, their sentences were subsequently declared to 'be brought to naught' as the 'punishment imposed [was] ... derived from a law wrongly applied'.²⁸ Was ten years in chains considered excessive? The trial records unfortunately do not elaborate. Instead the Mauritian court substituted Article 28 of the Slave Code with an article from the *Code Pénal* which did not include the theft of an animal.²⁹ Consequently, the court was able to impose the lesser penalty of six years in jail without chains.³⁰ The court ordered two other slaves with minor involvement in the thefts to come under police surveillance. A third slave came under the surveillance of his master, common minor sentences for slaves in Mauritius.³¹

²⁵ TNA, PP. 1828. XXVI (526), Slaves in Mauritius, (*Code Noir*) Article 28, Letters Patent, 1723. Manumitted blacks could still be charged and convicted under *Code Noir*.

²⁶ TNA, PP. 1828 XXVI (526), Slaves in Mauritius, (*Code Noir*) Articles 31 and 32, Letters Patent 1723. These two articles refer to these sorts of punishments for running away.

²⁷ SRNSW, NRS 1155, 2/8261, Court of First Instance, trial summary of Castor, 30 Nov. 1821, pp. 217–231.

²⁸ SRNSW, NRS 1155, 2/8261, Court of First Instance, verdict in the trial of Castor, Alexis, Charles and Fidèle, 21 Dec. 1821, pp. 217–231.

²⁹ *Code Pénal* Article 22, second section, title 1, 'All theft that do not carry any of the hereunder specific characteristics, but has been committed by two or by several persons, unarmed, or by one carrying a fire arm or all other murderous weapons, shall be punished by four years of detention.'

³⁰ *Code Pénal*, Article 24, second section, title 2, 'If the mentioned crime in the two preceding articles has been committed by night, the duration of each of the punishments carried in the said articles shall be increased by two years.' (for slaves and non-slaves)

³¹ SRNSW, NRS 1155, 2/8261, Court of First Instance, trial summary of slaves Alcindor, Clementine and Philogène, 21 Dec. 1821, pp. 217–231.

In the early nineteenth century, the distaste for inflicting torture and pain on humans was a continuation of late-eighteenth-century sensibilities. The infliction of physical pain had gone from being a ‘crucial weapon in the arsenal of justice’ to one where metropolitan thought recoiled from it in abhorrence.³² This does not suggest that corporal punishment was discontinued in Mauritian society. As Clare Anderson and Jocelyn Alexander explain, ‘[c]o-existence of physical punishment with incarceration, which although a feature of metropolitan Britain too, seems to have been a peculiar important feature of the colonial penal repertoire.’³³ The ‘experimentation’ with different legal codifications merely suggests that in the 1820s there was an attempt to exclude the most severe mutilation within the legal framework of *Code Noir*.

Colonial societies in general and captive colonial societies in particular were sites of violence. By interchanging the slave and penal codes the Mauritian courts were able to exercise a certain level of discretion, a concept cautiously applied within the French legal system. This practice corroborates Anna Johnston and Lauren Benton’s point discussed in Chapter One of this thesis and confirms the fluidity and complexity of colonial courts, where the imperial rulebook was being constructed and altered as they went along.³⁴

³² Margaret Abruzzo, *Polemical Pain, slavery, cruelty, and the rise of humanitarianism*, John Hopkins University Press, Baltimore, 2011, pp. 1–2.

³³ Clare Anderson and Jocelyn Alexander, ‘Politics, penalty and (post-) colonialism: an introduction’, *Cultural and Social History*, vol. 5, no. 4, pp. 4–5, <http://hdl.handle.net/2381/9853>.

³⁴ Lauren Benton, *Law and Colonial Cultures: legal regimes in world history, 1400–1900*, Cambridge University Press, Cambridge, 2002, p. 13; Anna Johnston asserts that elements of British law was also in a transitional phase. Anna Johnston, *The Paper War: morality, print culture, and power in colonial New South Wales*, University of Western Australia Publishing, Crawley, 2011, p. 194.

A dilemma, indeed contradiction, for the Mauritian courts, related to custodial sentences served on criminally convicted slaves.³⁵ Moving slaves from a plantation where they would perform hard labour to a prison where no work was required would appear lenient. The trial records indicate that slaves given custodial sentences would also incur additional punishments. In the case of Castor's co-accused, the court inflicted a transitory punishment prior to the prisoners commencing their six-year jail term. These prisoners were escorted to the public square in Port Louis and placed on top of a scaffold. Once there, they were strapped to individual poles and exposed to the elements and to public view for a set period. The degree of public exposure related to the sentence. For the punishment of confinement in irons in a house of corrections the 'exposure to the view of the people' was a period of six hours. Exposure for four hours related to the punishment of confinement (*de la gène*). A prisoner attached to a pole for two hours corresponded with a sentence to detention only, (Castor's co-accused).³⁶

This act of public shaming also included placards inscribed with personal details placed above the offender's head. The details included name, a profession (if given), place of residence and conviction.³⁷ The idea of a slave being imbued with a moral conscience, pricked by public shaming, conjures up interesting roles of punishments in order to 'civilise' slaves who had fallen foul of the law. The public shaming was also a manifestation of state-led imperial power and, as Michel Foucault suggests, 'an opportunity of affirming the dissymmetry of forces.'³⁸

³⁵ Paton, *No Bond but the Law*, p. 26.

³⁶ SRNSW, NRS 1155, 2/8261, Court of First Instance, extract from the minutes, 30 Nov. 1821, pp. 217-231.

³⁷ Alexis died some time prior to this public shaming.

³⁸ Michel Foucault, *Discipline and Punish: the birth of the prison*, Vintage Books, New York, 1995, p. 55.

Spectators were also an important aspect of the public punitive process and the idea of the omnipresence of the state's penal system inculcated further terror, both for the convict and the public. Foucault's concept of the 'punitive city' can be applied to a slave society such as Mauritius.³⁹ The public place of shaming, with its own punitive symbolism, was to linger in the public memory as a symbol of state power and as a deterrent. As Foucault suggests with regard to public executions, the 'main character' in the spectacle of the punishment is the people, whose 'real and immediate presence was required for the performance' to take place.⁴⁰ Of course, in Mauritius, the subtext of publically shaming slaves also speaks volumes about the fears of the white minority in the colony. In the metropole, private punishments of prison sentences or transportation gradually substituted public executions and humiliation.

In Mauritius, custodial sentences often carried a further punitive element of solitary confinement. The intention of isolation was to give the prisoner the opportunity to examine the reformatory spirit within.⁴¹ The time in solitary confinement commonly occurred at the commencement of the custodial sentence or just prior to release. The penal code in this regard stated that:

[w]henver any person is convicted of an offence for which under the code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole.⁴²

³⁹ Foucault, *Discipline and Punish*, p. 113.

⁴⁰ Foucault, *Discipline and Punish*, p. 57.

⁴¹ Mary Gibson, 'Global Perspective on the Birth of the Prison', review essay in the *American Historical Review*, vol. 116, no. 4, 2011, p. 1044.

⁴² NLA, MAUR 1275, Chapter III of Mauritius *Code Pénal* (Draft).

The duration in solitary confinement lasted from one up to three months, depending on the length of the sentence.⁴³ The question was, would a custodial sentence as a form of punishment have sufficient ‘meaning for unfree people’.⁴⁴ This was the dilemma of the courts prior to the abolition of slavery.

Convict Transportation and the ‘Great Confinement Thesis’ in a Colonial Context

Following the end of the Napoleonic Wars (1815) unemployment and economic depression saw a sharp rise in crime in Britain. As a remedy, the British criminal justice system increasingly favoured the punitive measure of convict transportation. In the metropole, detailed court reports and the newsprint media’s focus on the criminal behaviour of the poor, the uneducated and the unemployed fuelled the public fear of crime. As an instrument of imperial expansion, transportation turned offenders into an exploitable colonial labour force, while simultaneously solving the problem of what to do with the increasing prison population.⁴⁵ By the mid-to-late 1820s, many British colonial possessions of unfree labour systems such as the Cape, Jamaica and Mauritius had also introduced intra-colonial convict transportation.⁴⁶

⁴³ NLA, MAUR 1275, Chapter III of Mauritius *Code Pénal* (Draft). 1) a time not exceeding on month if the term of imprisonment shall not exceed six months, 2) a time not exceeding one month if the term of imprisonment shall exceed six months and shall not exceed one year. 3) a time not exceeding three months if the term of imprisonment shall exceed one year.

⁴⁴ Paton, *No Bond but the Law*, p. 87.

⁴⁵ John Hirst, ‘The Australian Experience: the convict colony’, in Norval Morris and David Rothman, eds, *The Oxford History of the Prison: the practice of punishment in western society*, Oxford University Press, Oxford, 1995, p. 263; Hamish Maxwell-Stewart, ‘Transportation’, in Paul Knepper and Anya Johansen, eds, *Oxford Handbook of the History of Crime and Criminal Justice*, Oxford University Press, Oxford, 2015, p. 640.

⁴⁶ Other Caribbean slave colonies such as the Bahamas, Dominica and St Vincent also made provisional changes to their penal codes in order to accommodate convict transportation, although this form of punishment was most commonly used in Jamaica. Diana Paton, ‘An “Injurious Population”: Caribbean-Australian Penal Transportation and Imperial Racial Politics’, *Cultural and Social History*, vol. 5, no. 4, 2008, p. 451.

In a global context, transportation was overwhelmingly a colonial phenomenon. The British and other Western empires such as France, Spain, Portugal and Russia transported millions of people to and between colonial possessions.⁴⁷ It is difficult to understand how transportation worked without including the colonial dimension. In fact, less than half the 376,000 convicts transported within the British Empire between 1615 and 1940 were sentenced in English, Welsh and Scottish courts.⁴⁸

In 1821 transportation was not yet an option for the Mauritian judges in the civil courts.⁴⁹ In the case of Castor, his trial records show that between 1823 and 1825 he committed at least one other offence, but no details of these offences exist. Then, on the night of 11 March 1825 there was a break-in at the shop belonging to merchant Henri Chauvin in the town of Port Louis.⁵⁰ Some days later the police arrested two Mozambican slaves, Victor and Alexis, and charged them with burglary.⁵¹ Castor, also wanted in relation to the same break-in, was eventually apprehended. While on the run Castor became one of 221 male and 35 female government apprentices declared maroons (runaways) that year. A total of 131 males, among them Castor, and 22 females were recaptured in 1825.⁵² In the period between 1820 and 1826, 1,357

⁴⁷ It is with Russia included that the figures stretch into the millions.

⁴⁸ Hamish Maxwell-Stewart, “‘And All My Great Hardships Endured’? Irish Convicts in Van Diemen’s Land’ in N. Whelehan, *Beyond the Island: Transnational Perspectives in Modern Irish History*, Routledge, London, 2015, p. 69.

⁴⁹ Mauritius only transported sailors, soldiers and mutineers prior to 1825. Marie Jones, *From Places Now Forgotten: an index of convicts whose places of trial were outside the UK and Ireland*, rev. edn., Marie Jones, Cardiff, New South Wales, 2005. Convicts were transported from India to Mauritius between 1815 and 1837. For more on this transportation flow see Clare Anderson, *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853*, Macmillan Press Limited, Houndsmills, 2000.

⁵⁰ SRNSW, NRS 1155, 2/8261, letter to Judge Edward Blackburn from General Prosecutor J. M. M. Virieux, 3 Apr. 1826, pp. 207–209.

⁵¹ NAM, JB 171, Court of First Instance, interviews with Victor and Alexis, 22 Mar. 1825.

⁵² Carter, Govinden, and Peerthum, *The Last Slaves*, ‘Table 4.4, Prize Negroes declared Maroons and those Captured between the 1st of January 1820 and 15th November 1826’, p. 71.

government apprentices were marooned for short or longer periods.⁵³ Castor, at the time of this latest offence, was assigned to Judge Christi, but had been hired out to a Dr. Michel.⁵⁴ Through the Mauritian practice of hiring labour, Castor was able to interact with slaves in private ownership and forge liaisons and associations which would have some serious consequences.

During the night of the theft, Castor, Alexis and Victor took some of the smaller stolen items to Dr. Michel's house. They returned to Chauvin's shop and hid more plundered stock under a nearby cart. A third trip yielded more loot. Later, when they went to pick up the parcel hidden under the cart it had disappeared. Unbeknown to the thieves a neighbour had observed their clandestine activities and sent one of his slaves to retrieve the stolen goods.⁵⁵ Perplexed, the trio quickly returned to Dr. Michel's house where they sold some of the items to a slave named Marcelin, belonging to Mr. Aubin. They dispersed the rest of the goods among three slaves in the Michel household, two other slaves and a free woman named Rosalie, to be collected later. Fearing arrest, they separated. They were all eventually taken into custody, including Marcelin and Dr. Michel's slaves.

The list of stolen items compiled by Chauvin was impressive. It included a significant quantity of cloth, muslin, pink, blue and yellow *au crepe* from France, 72 pairs of thin scissors, 60 dozen fine pocket knives, 50 pairs of women's shoes, more than 100 silk and cotton handkerchiefs, ribbons, socks, shawls, dozens of pairs of stockings, of

⁵³ Carter, Govinden, and Peerthum, *The Last Slaves*, p. 70.

⁵⁴ NAM, JB 171, letter from Commissioner of Police John Finniss, to General Prosecutor J. M. M. Virieux, 16 Mar. 1825.

⁵⁵ Chauvin's neighbour later returned the goods his slave had retrieved from under the cart.

which three dozen were for mourning, 15 dozen pairs of gloves, 6,000 black pins and 20,000 English needles. Additionally, money, cutlery and a quantity of jewellery; rings, gold crosses, gemstones, pearls and gold buttons had been taken from display cabinets in the shop.⁵⁶ Chauvin estimated the total value to be Spanish \$3,139.50 (*piastres*).

When interviewed, the marooned slaves Victor and Alexis confessed to the burglary and Marcelin admitted to receiving stolen goods. Castor denied all charges. When asked if he had prior convictions, he replied three, including a jail term.⁵⁷ In relation to this latest arrest Castor claimed that a slave named Joson (one of Dr. Michel's slaves) had implicated him in the burglary as 'revenge for not giving him tobacco.'⁵⁸ He further claimed he had overheard Joson 'planning a plot with a little black man' whom he did not know. Adding to Castor's woes a 'white' (most likely Chauvin's neighbour) testified to having seen him near the shop, adding weight to the other slaves' testimonies of his involvement, indeed instigation, of the burglary at Chauvin's shop.⁵⁹ Castor insisted the eyewitness must have been mistaken. He also denied knowing Victor and Alexis prior to meeting them in jail or having any knowledge of the theft at the shop or selling stolen goods.⁶⁰

⁵⁶ NAM, JB 171, list of items stolen provided by Henry Chauvin, 11 Mar. 1825.

⁵⁷ There is no mention in the records of Castor's other convictions. In the case of non-custodial sentences the courts often returned the convicted slaves to be punished either by their master or the police. This may also have been the case with Castor. SRNSW, NRS 1155, 2/8261, interview with Castor 18 Mar. 1825, pp. 207–209.

⁵⁸ NAM, JB 171, interview with Castor, 18 Apr. 1825.

⁵⁹ NAM, JB 171, interview with Castor, 18 Apr. 1825.

⁶⁰ SRNSW, NRS 1155, 2/8261, interview with Castor 18 Apr. 1825, last interviews with Alexis, Victor and Marcelin, 25 Jun. 1825, pp. 207–209.

In a letter to the examining Judge on 5 April 1825, Dr. Michel questioned Chauvin's claim regarding the 'considerable theft' from the shop. Dr. Michel insinuated that Chauvin was exaggerating the amount of stolen goods (possibly for compensation purposes), while at the same time lamenting how he was being 'sorely penalised' by the length of time he had been deprived of his slaves who had all been arrested following the robbery in March.⁶¹ Self-interest probably motivated Dr. Michel to cast doubt on Chauvin's claim as he potentially could lose the services of his human property for some considerable time if the court handed down a guilty verdict. Judge Christie, having hired Castor to Dr. Michel, also stood to lose the labour of his allocated government apprentice. In 1825, Castor, as a recidivist, faced the distinct possibility of a severe sentence—even transportation.

Transportation, as a form of punishment, gave judges the option of an intermediate penalty to that of execution.⁶² Like slavery, transportation was a form of 'social death'.⁶³ The removal of a convict from his or her familiar milieu disconnected the convict from established human relationships and a familiar place. A community that recognised this social alienation, as Fredrick Cooper explains, engaged in a 'ritualized process that symbolically stripped a person of an entire web of relations'.⁶⁴ Once stripped, the vulnerable individual could be reintroduced into an alien social structure which offered few familiar connections, creating malleable, vulnerable and easily

⁶¹ NAM, JB 171, letter from Dr. Michel to the Examining Judge Barthélémy Colin, 5 Apr. 1825. Michel also asks to have his slave Zelina released; as she was a mother and her child needed a mother's care.

⁶² John Gascoigne, *The Enlightenment and the Origins of European Australia*, Cambridge University Press, Cambridge, 2002, p. 132.

⁶³ This abstract concept used by Orlando Patterson in relation to slavery is also a useful tool in relation to transportation. Orlando Patterson, *Slavery and Social Death: a comparative study*, Harvard University Press, Cambridge Massachusetts, 1982.

⁶⁴ Frederick Cooper, 'Introduction' in Frederick Cooper, Thomas Holt and Rebecca Scott, *Beyond Slavery: explorations of race, labour and citizenship in postemancipation societies*, University of North Carolina Press, Chapel Hill, 2000, p. 6.

manipulated human beings.⁶⁵ Transportation not only meant physical removal, but also the institutionalisation into a state-organised form of labour exploitation. Few ever returned from their forced exile, whether sentenced in metropolitan or colonial courts.

In Mauritius, convict transportation from the island commenced at a time when the debate about the abolition of slavery in British colonies was gaining traction. Historically, transportation had emerged as a particularly useful tool during transitional moments: after wars, revolutions and during social change. In Mauritius, the introduction of transportation to and from the colony coincided with the contentious transition from French to British rule, the disquiet over the continued illegal slave trade and the integration of awkward systems of labour exploitation like the ‘apprenticeship’ of ‘Prize Negroes’. However, in Chapter Five of this thesis I will return to the use of transportation during transitional moments and show how during extreme social change and uncertainty it can have a negative effect on the number of convicts sentenced to transportation.

Adding convict transportation to the Mauritian penal repertoire allowed the courts to experiment with a different form of punishment which replaced public and corporal penal practices embedded in the French slave code and brought Mauritius into line with British penal strategies. Transportation was a flexible form of punishment which suited the needs of colonial societies, particularly those with long experience of forced

⁶⁵ Cooper, ‘Introduction’, p. 6.

labour migration.⁶⁶ Therefore, when the courts saw fit, the much less public punitive measure, but equally, if not more devastating punishment of transportation, could replace the hangman's noose or a custodial sentence.

In Mauritius, the social alienation associated with seaborne physical removal across oceans loomed large in the slave population's memory. Additionally, from 1815, the visible presence in the community of Indian convicted transportees working on infrastructure projects was a reminder of this form of seaborne punishment.⁶⁷

Transporting troublesome felons to distant penal locations commanded widespread appeal in colonial societies, particularly among the increasingly wealthy property-owning colonial elite.

Foucault, on the other hand, did not seriously consider transportation as part of a modern penal solution. He argued that convict transportation was outdated compared with the punishment regime within the controlled environment of the prison where a form of 'despotic discipline' aimed to recode the very existence of the prisoner into a compliant and docile individual.⁶⁸ Foucault's criticism of transportation mainly referred to its inability to control the variables which made prison discipline uniformly targeted. Its weakness, according to Foucault, was the inconsistent implementation and variations in the duration and intensity of the punishment. He was right in saying that the prison model achieved greater consistency by relying on the certainty of penal processes with unified regulations, something often hard to replicate through the convict transportation system.⁶⁹ Hamish Maxwell-Stewart agrees that consistency was

⁶⁶ Clare Anderson and Hamish Maxwell-Stewart, 'Convict labour and the Western Empires, 1415–1954' in Robert Aldrich and Kirsten McKenzie, *Routledge History of Western Empires*, Routledge, New York, 2014, pp. 102–117.

⁶⁷ Anderson, *Convicts in the Indian Ocean*.

⁶⁸ Foucault, *Discipline and Punish*, pp. 236 and 231.

⁶⁹ Foucault, *Discipline and Punish*, p. 9.

difficult within the convict system as it was not a 'static entity'. Unlike the prison, it was labour and penal policy and the 'twin objectives of fostering colonial growth and punishing offenders' which drove this penal regime.⁷⁰

Foucault's 'great confinement thesis' as applied to metropolitan Europe does not work as well in a colonial context. In order to disassociate themselves from slavery and other exploitative labour practices, prison reformers advocated the use of unproductive labour devices. These included hand cracking machines and treadmills not connected to grinding stones. They also tried to isolate prisoners as a means of creating docile workers through a shift in the emphasis in punishment from the body to the mind. In a plantation economy it made no sense to move the convicted to a location where the process of labour extraction was diminished. As shall become clear later, this did not stop the pro-slavery lobby from arguing that there were alternative labour-oriented practices that could be used to create docile bodies. The same applied to transportation. Just because it was a form of punishment that did not rely on confinement in a cell does not mean its intent was not to create compliant colonial workers. In fact, one of transportation's greatest advocates, Governor George Arthur argued that 'Bentham's notion that gaolers should possess a personal interest in the reform of convicts is beautifully realised in Van Diemen's Land'⁷¹ John Braithwaite asserts that when Foucault 'dismissed transportation' as an outmoded form of punishment he 'dismissed something that mattered.'⁷²

⁷⁰ Hamish Maxwell-Stewart, 'The Rise and Fall of John Longworth: work and punishment in early Port Arthur', in Peter Chapman, Richard Ely and Hamish Maxwell-Stewart, eds, 'Exiles of Empire: convict experience and penal policy 1788–1852' *Tasmanian Historical Studies*, Special Convict Issue, vol. 6, no. 2, 1999, p. 108.

⁷¹ Peter Chapman, 'The Island Panopticon.' *Historical Records of Australia*, vol. 1, no. 2, 1990, p. 8.

⁷² John Braithwaite, 'Crime in a Convict Republic', *The Modern Law Review* vol. 64, no. 1, p. 49.

Transportation lived on in the colonial world long after it stopped in the metropole. This is no mere coincidence as in many colonies, including Australia, transportation was successful in securing pliable workers.⁷³ By contrast, many metropolitan politicians associated transporting convicts with slavery and considered transportation a policy failure. Notwithstanding this criticism, convict transportation, which Jeremy Bentham saw as competition to his panopticon, did not ‘cripple’ the colonies and was extensively used in the colonial world long after his death in 1832.⁷⁴ Another reason why transportation proved such a durable form of punishment in the British colonial world was that it provided a cost-effective means of relocating ‘undesirable’ subjects from one colonial outpost to another.⁷⁵

By the time Castor committed his fourth offence in 1825, the first black slave (Sophie) was almost at her penal destination of New South Wales.⁷⁶ On 25 June of that year he appeared in the Court of First Instance charged with burglary at the shop of Chauvin. Castor, Victor and Alexis were found guilty and sentenced to 16 years imprisonment with hard labour ‘in irons’.⁷⁷ The other slaves implicated in receipt of or concealing stolen goods from Chauvin’s shop received various punishments. The slave Adolphe was returned to the discipline of the police, and Joson, Zélina and Zéphir were returned to the discipline of their master, Dr. Michel.

⁷³ Braithwaite, ‘Crime in a Convict Republic’, p. 64.

⁷⁴ John, Hirst, ‘The Australian Experience: the convict colony’, in Norval Morris and David Rothman, eds, *The Oxford History of the Prison: the practice of punishment in western society*, Oxford University Press, Oxford, 1995, pp. 275 and 274-276.

Alan Atkinson, ‘Jeremy Bentham and the Rum Rebellion’, *Journal of the Royal Australian Historical Society*, vol. 64, no. 1, 1978, p. 1.

⁷⁵ Hamish Maxwell-Stewart, ‘Transportation’, pp. 644-646.

⁷⁶ NAM, JB 152, Court of First Instance, trial records of Sophie, 17 Sep. 1823.

⁷⁷ SRNSW, NRS 1155, 2/8261, Court of First Instance, trial summary of Victor and Alexis, 25 Jun. 1825, pp. 265–281.

The court attached an extra condition to Castor's sentence. On completion of the current sentence he was to be transported to a fixed place of punishment for 'the remainder of his life.'⁷⁸ The Court of Appeal upheld this addition to the sentence.⁷⁹ Judge Edward Blackburn, acting on the recommendation of the chief commissioner of police, immediately lodged an application to General Prosecutor J. M. M. Virieux to put this condition into immediate effect. Blackburn wrote, '[t]his apprentice is very dangerous to society, and it is feared that he will still find a way to evade the chains and that he will carry out new robberies'.⁸⁰ The application was passed on to the governor for consideration. Fear and perceived dangers brought about by a disproportionate ratio of blacks, both slaves and free, to white colonists in Mauritius saw the courts scramble to get rid of Castor at the first possible convenience.

On 14 April 1826, Governor Sir Galbraith Lowry Cole and the other members of the council assessing Blackburn's recommendation agreed that Castor was a dangerous felon and for the good of the colony, his sentence to transportation was to be effective immediately.⁸¹ By opting for early transportation, this form of punishment served a dual purpose: to rid the island of a 'troublemaker' and act as a deterrent to others. As Foucault suggests, punishment generally was principally aimed at 'all the potentially guilty'.⁸² Castor was subsequently 'transferred to the fixed location for the transportation of criminals'.⁸³ He later embarked on the *Governor Phillip*, arriving in New South Wales on 4 July 1826. He became the first black Mauritian male

⁷⁸ TNA, CO 171, Blackburn to Virieux, extract from minutes of council, 5 Apr. 1826.

⁷⁹ SRNSW, NRS 1155, 2/8261, Court of Appeal, trial records of Castor, 5 Aug. 1825, pp. 249-264.

⁸⁰ SRNSW, NRS 1155, 2/8261, letter from Judge Blackburn to General Prosecutor, J. M. M. Virieux, 3 Apr. 1826, pp. 207-209.

⁸¹ TNA, CO 171, Blackburn to Virieux, extract from minutes of council, 5 Apr. 1826.

⁸² Foucault, *Discipline and Punish*, p. 108.

⁸³ SRNSW, NRS 1155, 2/8261, extract from minutes of council, 14 Apr. 1826, pp. 207-209.

transported to New South Wales. The cheap labour performed by government apprentices was highly sought after. Only when Indian indentured workers commenced arriving in large numbers after 1829, easing the pressure on labour, were other government apprentices transported.⁸⁴

Slave Ownership and the Judiciary

On 13 April 1831, more than 20 years after British annexation, the Court of St James in London made provisions for a Charter of Justice for ‘better administration of Justice in His Majesty’s Island of Mauritius and its Dependencies’:⁸⁵ With regards to the judges,

... no Judge of the said *Cour d’Appel*, nor the Judge of the said Tribunal of Premier Instance, nor the *Suppleant* of the said Tribunal, nor the Procureur General of the said Island, nor the Advocate General thereof, nor the Judge of the Court of Vice-Admiralty, nor any surrogate of such Judge shall be the owner of any Slave, nor be the proprietor of, or have any share or interest in, any land cultivated by the labour of Slaves, either directly or by any person or persons as a trustee or trustees for him, and each of the said several Officers is hereby declared incompetent to be or act as the Manager, Overseer, Agent or Attorney of, for or upon any Plantation or Estate within the said Island and its Dependencies.⁸⁶

⁸⁴ Government apprentices Celestin Jeanne Catherine, NAM, JB 316, 25 Mar. 1841 and Edmond NAM, JB 318, 6 Mar. 1841. Celestin and Edmond were both transported to Van Diemen’s Land in 1840. Celestin received a sentence of seven years for stealing a silver cutlery set from his then master, Mr. Gassin. Edmond was transported for life for burning down Polux Hama’s hut during a dispute over a woman. In 1844, Ragoo, an ex-government apprentice shoemaker was also transported for life to Van Diemen’s Land for murdering a man named Janau with his shoemaker’s paring knife following an altercation in *Le Camp Yolloff*, where they both lived. Ragoo, NAM, JB 338, 7 Mar. 1844.

⁸⁵ NLA, MAUR 315 Raymond Bruzard, *Avocat, Recueil: Des Decisions Judiciaires de L’ile Maurice, reports of cases argued and determined before the Court of the Island of Mauritius, 1842, 1843, 1844, 1845*, Mauritius, 1845, p. xvii. The publication was printed in French and English, each page split in half, English on the left side of the page and French on the right.

⁸⁶ NLA, MAUR 315, Bruzard, *Recueil: Des Decisions Judiciaires de L’ile Maurice*, 1845, pp. xx–xxi.

Notwithstanding these very stringent rules, in the next paragraph provisions allowed any officer attached to the court to hire slaves. It ordered that:

... nothing herein contained shall prevent any such Officer as aforesaid from hiring for, and employing in, the domestic service of himself or any members of his family any number of Slaves, if it shall be first made to appear by such Officer to the satisfaction of the Governor of the Island, that it is not in his power to hire free persons to perform such domestic service.⁸⁷

A ban on the judiciary owning slaves certainly paid lip service to the anti-slavery lobby which was gaining support in the metropole. For years, however, at the discretion of the governor, 'Prize Negroes' had been hired to work in the households and offices of judges and other officials. This source of labour now fulfilled the criteria of hiring non-slaves where possible, as 'Prize Negroes' were technically free. As Moses Nwulia explains, apprentices were poorly paid labourers serving 'the top colonial officials, judges and the military, and in private homes'.⁸⁸ Government apprentices often trained in various trades and worked as masons, blacksmiths, shoemakers, coopers and carpenters. Some worked in government offices while others were employed in domestic service. One who had access to government offices was Malgache, (alias Petit Jean), who was in the service of Mr. Lay, the deputy commissioner of police.⁸⁹ In 1834 he committed a bold robbery, stealing floor rugs and some papers from the office of the general prosecutor at the *Palais de Justice* building in Port Louis. Having struck at the heart of Mauritian justice, and with two

⁸⁷ NLA, MAUR 315, Bruzard, *Recueil: Des Decisions Judiciaires de L'ile Maurice*, p. xxi.

⁸⁸ Moses Nwulia, *The History of Slavery in Mauritius and the Seychelles, 1810-1875*, Associated University Presses, East Brunswick, 1981, p. 75.

⁸⁹ SRNSW, NRS, 1155, 2/8266, Supreme Court, trial summary of Malgache, (alias Petit Jean), 1 Apr. 1834, pp. 93–97. See also Chapter Four of this thesis regarding Malgache and Robben Island.

previous convictions for theft, Judge Blackburn in the Court of Appeal in April 1834 had no hesitation in upholding the sentence to transportation for seven years.⁹⁰

A table showing the returns relating to the slave population dated 1 January 1827 also shows the distribution of ‘government blacks’ within government departments and among individuals.⁹¹ According to the return, the chief judge in Mauritius had 17 government apprentices in his employ, comprised of seven men, eight women and two girls, which he was obliged to feed and clothe. The registrar of slaves had four male apprentices. Government house and government residences had more than 250 registered government apprentices. Three apprentices, a male and two females, were even hired and paid for by the Ceylon government to attend to some Kandyan prisoners banished to Mauritius.⁹² According to the distribution, more than 1,000 government apprentices were employed throughout the island in 1827.⁹³ Even in the 1840s, slaves taken by the British Navy from French and other slave-trading nations’ vessels in the Indian Ocean arrived in Mauritius and worked as apprentices.⁹⁴ France for instance did not abolish slavery until 1848.⁹⁵

Commissioners Colebrook and Blair in their 1829 report had recommended amelioration of the circumstances of government apprentices in Mauritius. They suggested a reduction in the length of engagement, which was set to 14 years. The Commission described the circumstances of government apprentices in Mauritius as

⁹⁰ SRNSW, NRS 1155, 2/8266, Supreme Court trial summary of Malgache, alias Petit Jean, 1 Apr. 1834, pp. 93–97.

⁹¹ TNA, PP. 1828. (207), *Slave Population, and apprenticed Negroes*, return to an address of the Honourable House of Commons, 23 Mar. 1826, pp. 47–48.

⁹² TNA, PP. 1828. (207), *Slave Population, and apprenticed Negroes*, 23 Mar. 1826, pp. 47–48.

⁹³ In addition, another 300 or more were classed as invalids, lepers or in jail. Children under nine were also part of this group.

⁹⁴ Carter, Govinden and Peerthum, *The Last Slaves*, pp. 41–43.

⁹⁵ Hamish Maxwell-Stewart, *World Heritage Serial Nomination for Australian Convict sites*, Consultant’s Report for the Department of Environment and Heritage, Canberra, 2006, p. 12.

very unfavourable and lamented that ‘their condition as slaves would have been preferable had they not been captured.’⁹⁶ According to the commission, the treatment and status of government apprentices in Mauritius were fraught with contradictions. Their status as free did not reflect their ability to choose employer or control their lives. The fact that Judge Christie hired out Castor supports the view that captured ‘Prize Negroes’ were not free workers, but more often treated like slaves in private ownership.

‘A Human Slaughter House’⁹⁷ or ‘Humane Rescue’?

The American Revolution (1775–1783) was a ‘pivotal event’ in the anti-slavery movement, giving both voice to and propelling the anti-slavery debate forward in Britain.⁹⁸ Since the 1780s, philosophical and intellectual opposition to the institution of slavery had been growing and the British public had become embroiled in political debates about humanitarianism, the abolition of slavery and the advancement of ‘moral progress’.⁹⁹ The dilemma of free versus unfree labour practices and the quandary over economic rational vis-à-vis moral justification became a persistent one.¹⁰⁰ Increasingly, pro-slavery sentiments were perceived as anachronistic and out of tune with European metropolitan sentiments of humanitarianism.¹⁰¹

⁹⁶ NAM, IB 20/7-12, evidence from the commissioners of eastern inquiry, William Colebrooke and William Blair, 1 Jun. 1829, p. 44.

⁹⁷ *Anti-Slavery Monthly Reporter*, no. 45 (no. 21, vol. ii), Feb. 1829, p. 432.

⁹⁸ Christopher Brown, *Moral Capital: foundations of British Abolitionism*, p. 27.

⁹⁹ Unlike in Britain, towards the end of the eighteenth century the anti-slavery debates in France were not at the forefront of the public imagination and disappeared as a movement. Seymour Drescher, *The Mighty Experiment: free labor versus slavery in British Emancipation*, Oxford University Press, Oxford, 2002, p. 78. Christopher Brown, *Moral Capital: foundations of British Abolitionism*, The University of South Carolina Press, Chapel Hill, 2006, p. 5.

¹⁰⁰ Seymour Drescher, *The Mighty Experiment*, pp. 74–81.

¹⁰¹ Seymour Drescher, *Capitalism and Anti-slavery: British Mobilisation in Comparative Perspective*, Oxford University Press, Oxford, 1986, pp. 25–30.

The emerging humanitarian movement questioned the moral justification for a slave to be bought, sold, inherited or used to settle debts. Those favouring the slave trade argued that this trade was tapping into already existing African slave markets and networks. Geographically relocating tragic African figures, away from what Europeans considered despotic societies, would save them from kidnap, rape, and famine, draught and tribal warfare. The pro-slavery argument supported the view that ‘freedom in poverty’ was less attractive than a contented well-nourished slave on a plantation.¹⁰² Some colonists argued that one moral justification for continuing slavery was ‘rescue’.

One who agreed with the idea of rescuing African slaves was Medical Officer Amédée Bonsergent (who was the owner of Sophie, the female slave transported to New South Wales in Chapter Two). He had first arrived on *Ile Bourbon* (another of the Mascarene Islands) as an assistant surgeon on the French frigate H. M. *l’Amphitrite*, back in French hands after the Treaty of Paris in 1814. In August 1816 he came to Mauritius on an unspecified family matter.¹⁰³ For unknown reasons he extended his stay and later requested to remain in Mauritius, relinquishing his naval medical career. Shortly after his arrival the local government appointed him *Médecin Vaccinateur*. In his new role he was responsible for the medical care of 3,000 slaves in one of the largest districts of Mauritius, *Rivière du Rempart*, which at the time had 22,000 registered slaves. Among his many responsibilities was a weekly report to the chief of the medical department on the sanitary conditions in the district. Bonsergent returned to

¹⁰² Abruzzo, *Polemical Pain*, p. 6.

¹⁰³ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 6.

France in September 1835, only a few months after the abolition of slavery in Mauritius.¹⁰⁴

In the introduction to his doctoral thesis on the diseases most frequently contracted by black slaves in Mauritius and their treatment by the colonists, published in 1837, Bonsergent had a ‘few preliminary thoughts’ regarding the state of slavery since the beginning of British domination of *Isle de France*.¹⁰⁵ Although Bonsergent was not in favour of the British Slave Trade Act of 1807, he claimed that once *Isle de France* had become a British colony the Mauritians had worked towards ending the slave trade and ‘willingly reported the few renegades who were still attempting to carry out the trade’.¹⁰⁶ Bonsergent was indignant about the unfair treatment of these ‘good, generous, and warmly welcoming people whose reputation had been destroyed under the weight of perfidious accusation’ of illegally trading in slaves.¹⁰⁷ Bonsergent may have been looking through rose-coloured glasses when it came to his fellow French-Mauritians. History records that for a time, at least, after 1813, the illegal slave trade in Mauritius continued with impunity.

In relation to the slave trade Bonsergent asked, ‘what was the crime? Was it snatching from their torturers’ hands thousands of victims destined to die?’ He lamented that, as a result of the abolition of the slave trade, planters would not be able to rescue prisoners of war captured in the many tribal conflicts of Madagascar. He argued that the victors would kill their prisoners (taken as slaves) if they were unable to sell them

¹⁰⁴ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 6.

¹⁰⁵ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 6.

¹⁰⁶ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, pp. 6–7.

¹⁰⁷ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 6.

for a profit.¹⁰⁸ Unlike European armies, Madagascan soldiers had to fend for themselves and as a result often sold these captured slaves, who were then on-sold into the illegal and insatiable Mauritian slave market, supplying the rapidly expanding Mauritian sugar plantations with cheap labour. As Margaret Abruzzo rightly points out, the debate about slavery was not just about an abstract moral construct, but also about a ‘lived institution’, affecting a large number of enslaved people deprived of human dignity.¹⁰⁹

But, what awaited these slaves in Mauritius? It was certainly not a life of freedom. The humanitarian language and the relativity of suffering and exploitation of the enslaved were discourses which pitched civilised European society against African perceived brutality. Bonsergent took the view that these ‘victims’ would suffer less in Mauritius and were better off under the ‘humanitarian’ umbrella of a Mauritian slave plantation than enduring the barbarity of African societies. The trade in slaves was therefore done ‘at least on humanitarian principles as much as self-interest’, wrote Bonsergent.¹¹⁰ He felt planters had made the ‘greatest sacrifices’ in order to ameliorate the conditions on the slave plantations in the form of gristmills to grind sugar cane to produce some of the finest sugar in the empire and importing oxen and mules from as far away as Buenos Aires and France to pull the carriages on the sugar plantations. He failed to point out that, although the production of sugar became more factory-like, increasing profits to further entrench class structures, the majority of slaves working in the sugar cane fields still laboured under harsh, unchanged agricultural techniques.

¹⁰⁸ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 8. Sophie (in Chapter Two), one of Bonsergent’s Malagasy slaves, may well have been a captive of Madagascan soldiers.

¹⁰⁹ Abruzzo, *Polemical Pain*, p. 9.

¹¹⁰ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 9.

Charles Telfair, another imperial globetrotter, who at the beginning of the nineteenth century found himself in Mauritius, supported plantation slavery. Since 1797 Telfair, originally from Ireland, had served in various official capacities in Europe, Asia and Africa.¹¹¹ He arrived in Mauritius in 1811 to take up the post of colonial secretary to the first British governor in Mauritius, Robert Farquhar. Telfair later set out to create a ‘plantation utopia’ with various members of Mauritian society. Telfair and his business partners established the Bel Ombre Estate in the district of Savanne in 1816, the same year Bonsergent arrived in Mauritius.¹¹²

Enthusiasts like Telfair believed that it was ideologically possible to align the utopian slave plantation model with the modern institution of the British prison. Telfair tried to reinvent and resell the image of the slave plantation by placing it within the philosophical paradigm of a modern institution, rather than a regime of exploitative labour extraction. Anti-abolitionists throughout the empire also sought to construct a favourable image of the plantation as a place of order and stability by comparing it with the perceived ability of the modern prison system to ‘civilise’.

In the early nineteenth century there was a philosophical shift from the human body as a site of brutal mutilation and torture to one of science, where the prison symbolised a new form of humanitarian punishment. In a complex social process, physical pain as a

¹¹¹ Charles Telfair, *Some Accounts of the State of Slavery at Mauritius: since British occupation in 1810 in refutation of anonymous charges promulgated against government and the colony*, Piccadilly, James Ridgeway, 1830, p. vii. Telfair had served in the medical department of the Navy, been in charge of the naval hospital at the Cape, participated in the blockade of the Mascarene Islands and in charge of administrative duties after Ile Bourbon came into British hands.

¹¹² The partners were Major Waugh, Captain Lesage, and Mr. Blancard, the Civil Commissary of Savanne.

form of punishment was substituted by power and control over bodies and minds. According to Telfair, behind imaginary walls of mass confinement slaves would labour collectively under supervision. Based on the European prison model and within the disciplinary structure of a plantation, slaves would cast off the uncivilised nature of African cultures. Many aspects of Telfair's utopian plantation theory fit with Foucault's 'great confinement thesis'. Its goal, within the confines of an institution, was to create obedient subjects by making people into 'docile bodies'.¹¹³ Telfair believed that within the disciplined institution of a plantation slaves would become more peaceful, patient, dutiful, submissive, diligent and loyal, thus eventually making them 'fit for freedom', like the eventual release from prison.¹¹⁴

Telfair and Foucault were both concerned with the 'body politics' and how to turn slaves or prisoners into 'objects of knowledge' through subjugation.¹¹⁵ As Foucault states, 'it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and their submission', concepts which all transfer neatly to Telfair's 'plantation prison'.¹¹⁶ But, was the environment of plantation slavery a suitable foundation for 'civilising' slaves? Telfair thought so; believing in the ability of Africans to 'progress', holding up Bel Ombre as a triumphant experiment in social engineering. Telfair also wanted to transfer European husbandry to tropical sugar cultivation and 'raise the slaves to the physical and moral level of English farm

¹¹³ Foucault, *Discipline and Punish*, pp. 135–169. Among the workforce on Bel Ombre were also Indian prisoners. They were part of a rebellion which took place on the plantation in 1817. For more on the rebellion see Clare Anderson, 'The Bel Ombre Rebellion: Indian convicts in Mauritius, 1815–53', in Gwyn Campbell, ed., *Abolition and its aftermath in the Indian Ocean Africa and Asia*, Routledge, New York, 2005, pp. 50–65.

¹¹⁴ Telfair, *Some Accounts of the State of Slavery at Mauritius*, pp. xi–xii and 25–26.

¹¹⁵ Foucault, *Discipline and Punish*, p. 28.

¹¹⁶ Foucault, *Discipline and Punish*, p. 25.

servants'.¹¹⁷ Some anti-abolitionists did not agree with Telfair's social experiment. They were worried that by adding intellectual power to the physical prowess of the 'Negroes', this would alter the chain of being and the established hierarchy as well as creating unrest and rebellion.

Reforming and civilising African slaves through religious instruction and baptism would ensure converted slaves a place in paradise. Telfair claimed that on Bel Ombre the slaves' physical, moral and religious advancement was happening at speed under his guidance and philosophy.¹¹⁸ However, as Baron Grant cynically noted in his memoirs, after living in Mauritius for a period of 20 years in the mid-eighteenth century, 'it is not an easy matter to persuade them [the slaves], that the Europeans will ever prove their guides to heaven.'¹¹⁹

One of the most vocal critics of the Mauritian slave plantations was the *Anti-Slavery Monthly Reporter*, a British publication fiercely advocating for the abolition of slavery. In January, 1829, it published a damning report with allegations of abuse and neglect of slaves on Telfair's experimental plantation.¹²⁰ In the following month's issue, employing antagonistic rhetoric, the *Anti-Slavery Monthly Reporter* described the plantation under Telfair's management as a 'human slaughter house'.¹²¹ Telfair, in an equally stinging rebuttal, defended the plantation against what he saw as unwarranted and unfair criticism of the slave practices in Mauritius. In a letter

¹¹⁷ Telfair, *Some Accounts of the State of Slavery at Mauritius*, p. 25.

¹¹⁸ Telfair, *Some Accounts of the State of Slavery at Mauritius*, p. v.

¹¹⁹ Baron Grant, *The History of Mauritius, or the Isle de France, and the Neighbouring Islands, From their First Discovery to the Present Time, Composed Principally from the Papers and Memoirs of Baron Grant, Who Resided Twenty Years in the Island, by his Son, Charles Grant Viscount de Vaux*, London, 1801, p. 77.

¹²⁰ *Anti-Slavery Monthly Reporter*, no. 44, Jan. 1829, (no. 19, vol. ii) pp. 373-395.

¹²¹ *Anti-Slavery Monthly Reporter*, no. 45, Feb. 1829, (no. 45, vol. ii), p. 432.

(pamphlet) to Governor Charles Colville in January 1830, Telfair promoted his conceptual framework for the estate. He also wanted to set the record straight by addressing the measures taken for the amelioration of the conditions of the slaves on Bel Ombre, which he stressed had ‘proceeded at an accelerated rate, by the series of wise and unremitting efforts in progress for their improvement and that of the colony now under your Excellency’s guidance’.¹²²

In his doctoral thesis, Bonsergent questioned British solidarity to its own working class and lamented the metropolitan preoccupation with the abolition of slavery. He wrote:

... the people of Britain became fanatical and insensitive to the plight of its own European brothers, to the point of letting them starve to death and die of poverty right next to them and only cared for the immediate freeing of individuals 4,000 leagues away, whom they did not know and whom were generally happier than them.¹²³

According to Bonsergent, a fertile imagination and fabrications of torture and killings, such as those expressed by the *Anti-Slavery Monthly Reporter*, formed part of the ‘stratagems to exhilarate people’s pity towards their sad African brothers’.¹²⁴ Additionally, Bonsergent was angered by placards posted at ‘every crossroads in London’ to discredit the French-Mauritian slave owners.¹²⁵ Bonsergent seemed unwilling to acknowledge that, juxtaposed with the institution of slavery, were the concerning issues of unfreedom, exploitation, violence, sacrifice, intimidation, fear and misery. The battle between the pro- and anti-slavery factions was not just about

¹²² Letter from Charles Telfair to Governor Charles Colville, dated 30 Jan. 1830, in Telfair, *Some Accounts of the State of Slavery at Mauritius*, p. v.

¹²³ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 8.

¹²⁴ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 9.

¹²⁵ Bonsergent, *Observation Médico-Pratiques sur Les Malades*, 1837, p. 9.

humanitarianism but equally, as Abruzzo asserts, a ‘war to mark out the meaning of humanness’.¹²⁶ In the end, the supporters of the *Anti-Slavery Monthly Reporter* were able to write the guidebook governing European humanitarian ideology. Telfair’s utopian vision of plantation slavery as the foundation of ‘civilised’ colonial life was undoubtedly tangled up with the need for greater productivity leading to harsher treatment, as indicated by the high rate of marronage which was a constant problem on the plantation.¹²⁷ That the enslaved on Bel Ombre were prepared to risk the dire consequences of marronage, suggest that life was far from a utopian existence for the wretched souls trapped within Telfair’s ‘plantation prison’.

Conclusion

In Mauritius, the French colonists argued fiercely for the retention of the slave trade. The British continued to defend the introduction of the Transportation Act of 1807. This standoff saw many colonists go to great lengths to continue the flow of illegal slaves into Mauritius. Underpinning this action was the belief that, without the institution of slavery, which they considered the cornerstone of Mauritian society, their way of life would be lost. The power of the legal fraternity in the colony was another source of constant British consternation. By introducing a Charter of Justice in 1831, London tried to stamp out some of their misgivings in relation to the Mauritian judiciary. Going to the heart of Mauritians’ right to own slaves, the charter banned judges and other court officials from slave ownership. Little changed, however, as other ways of procuring servants in the form of government apprentices (‘Prize Negroes’) became a legitimate substitute for slaves.

¹²⁶ Abruzzo, *Polemical Pain*, p. 7.

¹²⁷ For a comprehensive analysis of the working conditions on Bel Ombre see Clare Anderson, ‘The Bell Ombre Rebellion’, pp. 50–65.

The French legal system in Mauritius, with its rigid codifications, governed the criminal justice system in the colony. Mauritian judges, in an attempt to move away from the harshest and most brutal penalties for crimes committed by slaves, would at times interchange the slave code and the penal code in order to arrive at punishments which were in line with the new sensibilities of the early nineteenth century. Up until the introduction of convict transportation in the civil courts in Mauritius in 1825, this was one way of ameliorating the harsh physical penalties attached to the Mauritian slave code.

The punishment of transportation became an alternative to the death penalty, public mutilation and shaming or the quiet workings over of the mind and body in a penitentiary. Prison, as an unproductive space, tried to distance itself from slavery, whereas plantations such as Bel Ombre tried to align themselves with the prison to enhance the anti-abolition argument. Telfair's social experiment served a dual purpose: gain and retain control over the slave population on the plantation and, at the same time, have repressed minds and docile bodies perform hard physical labour under close supervision in order to maximise profits. Amédée Bonsergent's argument in his doctoral thesis that enslaved people were materially better off than European labourers, shows that both the pro- and anti-slavery lobbies, in the colonies as well as in the metropole, claimed to reflect humanitarian values and ideals, engaging with both the moral and economic dimensions of the argument for and against slavery. Foucault's 'great confinement thesis' thus makes a conceptual link in this chapter by synthesising the institutionalised discipline of the prison with the slave plantation in

line with the new penal practices, away from bodily pain and mutilation to disciplining the individual convict or slave's mind.

For the British Empire, transporting convict labour fulfilled the desire for economically motivated colonisation, strategic domination and political ambition. As time went on however, metropolitan politicians and lawmakers viewed this form of punishment as outdated. Colonial societies did not share the metropolitan view of transportation as a flawed form of punishment. In the broader historical context of colonialism, in popular culture and in public imaginings transportation emerged as an important punitive mechanism and Mauritian convict transportation became part of a larger imperial network of transportation systems. As a form of punishment and social control, transportation oscillated between displacement and placement, between illusion and disillusion, between retribution and redemption and between hopes and fears. Maritime dislocation was a powerful deterrent and this form of punishment made sense in a society where the economy's main labour power was derived from the bodies of slaves and other coerced workers already accustomed to dehumanising, exploitative conditions.

CHAPTER 4

***Plus il reste le même ...* The more things stay the same: everyone in their place**

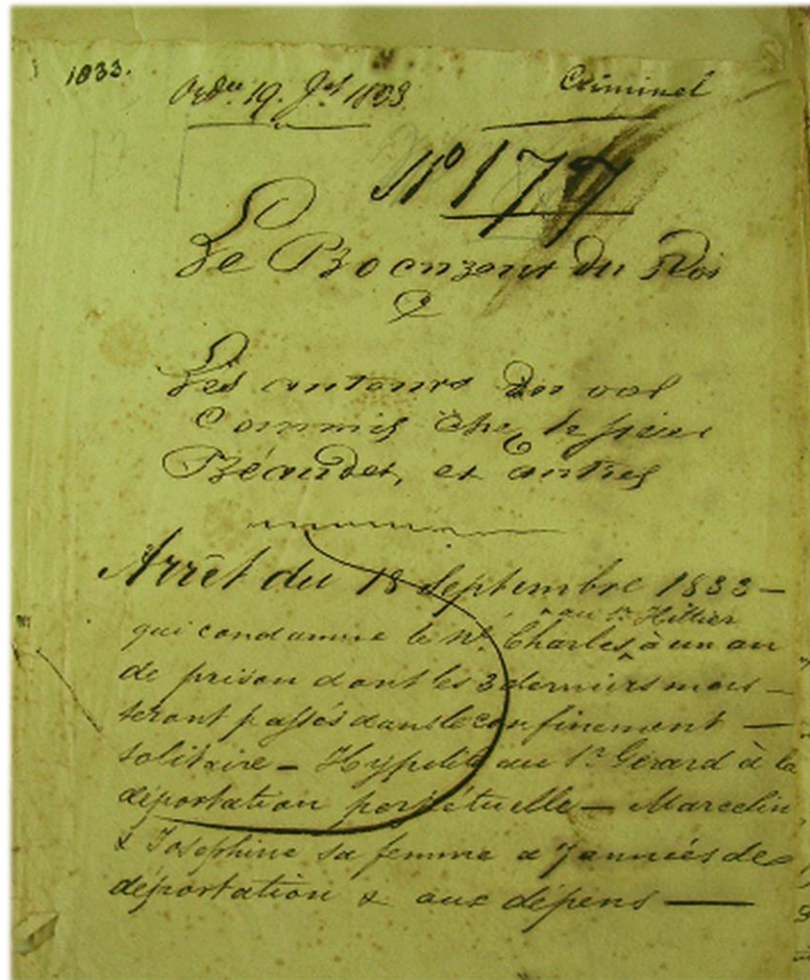


Figure 7 Trial Records for Marcelin Currac, Joséphine Ally and Hypolite: NAM, JB 253, Sep. 1833.

No law can be executed unless it be in accordance with public opinion, and the feelings of the white Mauritians were altogether in favour of slavery.¹

¹ A. F. Fokeer, 'The Negroes in Mauritius', *Journal of Negro History*, vol. 7, no. 2, 1922, pp. 202.

Introduction

At the end of November 1836, the convict ship *The Eden* with fresh provisions on board was ready to depart Simonstown in the Cape of Good Hope for its final destination, New South Wales. The number of convicts on board had swollen to 302 after Surgeon Superintendent Gilbert King had agreed to accept an extra 22 prisoners from Robben Island.² Convict ships would normally try to sail non-stop to Australia, but at times had to stop off at Table Bay when there was an outbreak of scurvy or sometimes due to severe seasickness, which was the case on *The Eden*.³ These stopovers presented an opportunity to offload some of the convicts from the island prison. Selected convicts were quickly processed and transferred to Simonstown ready to board the convict ship. For the most part, convicts transported from the Cape arrived in the Australian penal colonies on these especially fitted-out convict ships, whereas all the convicts embarking on the journey to Australia from Mauritius did so on ‘minor vessels’, carrying cargo and sometimes additional passengers.⁴

² SRNSW, NRS12189; Annotated printed indents fiche: 726; *The Eden* from the Cape of Good Hope via Hobart Town to Sydney arriving 17 Jan. 1837. Gilbert King, Surgeon Superintendent, *The Eden* Medical Journal, 3 Aug. 1836 to 18 Jan. 1837. *The Eden*, under Captain C. A. Mollinson, had left England in early September 1836 with 280 convicts on board. Reaching the equator, the surgeon superintendent kept the prisoners on deck as much as possible and tried to alleviate their poor physical and mental health by diet and keeping their spirits up by singing and dancing on deck. However, these measures failed to improve the frail condition of many of the convicts. After more than two months they arrived at the Cape of Good Hope. Sometimes convicts, too sick to travel on, stayed behind and joined other convicts on Robben Island until they were well enough to continue their journey on the next ship arriving in the Cape. *The Eden* became the last ship to transport convicts to New South Wales, arriving in Sydney on 18 November 1840. When reviewing ‘Old Convict Days in Australia’, Charles White wrote in the *Wellington Times* on 17 January 1907 that ‘the last transport ship to discharge her chained felons being the Eden ... Thus also the reign of the lash in its severest exercise was broken’. <http://trove.nla.gov.au/ndp/del/printArticleJpg/141597049/3?print=y>; Leslie C. Duly, “‘Hottentots to Hobart and Sydney’: the Cape Supreme Court’s use of transportation, 1828–1838”, *Australian Journal of Politics and History*, vol. 25, no. 1, footnote 24, p. 50.

³ Hamish Maxwell-Stewart and Rebecca Kippen, ‘Morbidity on Convict Voyages to Australia’, in Peter Baskerville and Kris Inwood, eds, *Lives in Transition: Longitudinal Analysis from Historical Sources*, McGill-Queens University Press, Montreal, 2015, pp. 46 and 53.

⁴ Duly, “‘Hottentots to Hobart and Sydney’”, p. 44.

The Dutch East India Company (VOC) saw Robben Island as an ideal prison and established a penal settlement on the island in 1657.⁶ To this isolated outpost they sent slaves, outcasts, misfits, rebels, prisoners of war, political prisoners, indigenous leaders and prisoners sentenced to hard labour. Under British rule it continued as a prison, holding criminal and political prisoners and soldiers, some under order of transportation. The island prison also received convicts transported from other British colonies within the Indian Ocean, such as Mauritius. Multi-racial groups of convicts would labour together on various projects to benefit the prison community.⁷ It closed down as a penal station in 1846.⁸

Prior to 1831, the slaves sentenced to transportation in Mauritius had been transported to the Australian penal colony of New South Wales. A change in policy saw this option closed and alternatives needed to be explored. This chapter will argue that the decision to redirect all slaves convicted to transportation from Mauritius to Robben Island after 1831 was predicated on their pre-conviction status as unfree. Equally, a free Mauritian's criminal liaisons with a slave would have a bearing on the severity of the free felon's sentence and the penal destination. This complicates the existing understanding of Indian Ocean transportation flows. This chapter will also discuss the question of legal responsibility and how the justice system perceived and acted in relation to this legal construct.

⁶ VOC stands for Vereenigde Oost-Indische Compagnie

⁷ The prison commandant decided who left the island. 'Useful' convicts with certain skills would labour on the island for years and some remained there for the duration of their sentence after transportation to the Australian colonies ceased. Most spent a minimum of two to three years on the island prior to transportation to New South Wales or Van Diemen's Land. Duly, "'Hottentots to Hobart and Sydney'", p. 46.

⁸ Deacon, 'Introduction', *The Island: a history of Robben Island 1488-1990*, pp. 1–8; Simon de Villiers, *Robben Island: out of reach, out of mind, a history of Robben Island*, C. Struik, Cape Town, 1971. For more information on convict transportation from the Cape Colony see V. Candy Malherbe, 'Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842', *South African Journal*, vol. 17, no. 1, 1985, pp.

Stories of the dreadful conditions on Robben Island were common. Some convicts died from disease while others allegedly committed suicide.⁹ Tales of terrifying and sometimes tragic incidents during the sea voyages would also filter back to Mauritius with the desired effect. The brig *The Brought Castle*, which departed Port Louis on 13 May 1834 for Table Bay with five convicted slaves onboard, was one such story. During the voyage the vessel hit a severe storm with disastrous consequences. As the storm worsened, it was all hands on deck, including the convicts. A tremendous wave hit the ship and washed three of the Mauritian convicts, the ship's carpenter and a crewmember overboard. Miraculously another wave threw the crewmember back on deck. The ship's carpenter and the Mauritian slaves were not so lucky. A document referring to transported convicts from Mauritius to Robben Island shows Azor, Jean Baptiste and Edouard as drowned at sea.¹⁰

Between 1828 and 1840 Robben Island served as a 'holding cell' or 'intermediate detention' for convicts under sentence of transportation.¹¹ Annually, around 30 of these convicts, who had been tried and sentenced to transportation in the Cape courts or in colonial courts in other British colonies such as Mauritius and St Helena were earmarked for transportation or re-transportation.¹² The list of convicts transferred to

⁹ Rumours and myths existed that some prisoners would enter into a suicide pact, casting lots with fellow prisoners as to who would kill whom to put one of them out of his misery. The surviving convict would invariably be transported to Hobart or Sydney, considered a fate worse than death. Such rumours/myths also existed in the Australian penal colonies without being substantiated as other than myth. Luke Clarke, "Lost in all humanity?": suicide, religion, and murder pacts in convict Van Diemen's Land', unpublished Honours thesis, University of Tasmania, 2002; de Villiers, *Robben Island*, p. 44.

¹⁰ NAM, RA 121, nominal list of all slaves belonging to inhabitants at the Mauritius at present at Robben Island, under sentence of transportation, 2 Feb. 1835.

¹¹ Malherbe, 'Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842', p. 22.

¹² From August 1842, transportation to Sydney and Hobart ceased altogether. The close proximity of Robben Island made it less than an ideal substitute for the Australian penal colonies, failing to instil the same intended dread amongst the Cape population as being transported across the Indian Ocean. Having no alternative, Robben Island became the main prison for Cape convicts. Duly, "Hottentots to Hobart and Sydney", pp. 44–45.

The Eden in November shows the diverse ethnicity of the prison population on Robben Island in 1836.¹³ The contingent included Khoisan or ‘Hottentots’ (native Africans), Dutch (South African born Dutch-speaking Boers), Malay, Chinese, an ex-slave originally from St Helena as well as four ex-slaves who had been transported from Mauritius to Robben Island between 1832 and 1834.¹⁴

A couple of months before *The Eden* arrived in the Cape another convict ship, *Lady Nugent*, had also stopped off at Table Bay on its journey to Australia due to an outbreak of scurvy.¹⁵ A request to take on board prisoners from Robben Island was granted. Four black Cape convicts and a Mauritian government apprentice of Mozambiquan origin were transferred to the convict ship.¹⁶ These Robben Island convicts joined British convicts as well as convicted former slaves from Antigua, Dominica and Demerara.¹⁷ The convicts on board these two ships offer a glimpse into the British Empire’s administration and the multi-directional movement of non-European convicts. The convicts on board *the Eden* and *Lady Nugent* are indicative, not only of Indian Ocean intra-colonial penal practices between Mauritius, the Cape and the Australian penal colonies, but also demonstrate the use of intra-colonial

¹³ Among them were two Indian convicts initially transported to Mauritius. As convicts, they committed a violent robbery and were re-sentenced to transportation to Robben Island for 20 years. NAM, JB 242, verdict in the trial of Narahime and Bourdaye, 17 Apr. 1832; NAM, RA 121; return of convicts at Robben Island pertaining to Mauritius, under sentence of transportation, 21 Dec. 1839; Clare Anderson, *Subaltern Lives: biographies of colonialism in the Indian Ocean World*, Cambridge University Press, Cambridge, 2012, pp. 44–48.

¹⁴ SRNSW, NRS12189; Annotated printed indents; fiche: 726; *The Eden* from the Cape of Good Hope via Hobart Town to Sydney arriving 17 Jan. 1837. On board were Mauritian ex-slaves Jeannot, NAM JB, 232, 13 Sep. 1832; Hypolite, NAM JB 253, 18 Sep. 1833; Louya, NAM JB 262, 23 Apr. 1834 and the slave from St Helena, Felix, SRNSW, fiche 640, 12 Apr. 1826.

¹⁵ SRNSW, fiche 719/908, p. 169, *Lady Nugent* left England on 14 July 1836, arrived Van Diemen’s Land on 12 November 1836 and reached the destination of New South Wales on 5 December 1836. SRNSW, fiche 724/169/908, *Lady Nugent*.

¹⁶ SRNSW, NRS 1155, 2/8266, Court of Assizes, trial summary of Malgache, (alias Petit Jean), 1 Apr. 1834, pp. 93–97; NAM, JB 233, trial records of Malgache, 1 Apr. 1834.

¹⁷ SRNSW, *Lady Nugent*, fiche, 724/169/908.

transportation of convicted slaves from the British slave colonies in the Caribbean to Australia.¹⁸

In the 1820s, British transportation policies had seen Caribbean slave colonies commence convict transportation to Australia via Britain as a punishment for a range of crimes such as burglary, domestic theft and theft of domestic animals, thus expeditiously ridding the colony of troublesome and dangerous slaves.¹⁹ In Mauritius, convict transportation also emerged as a flexible and effective instrument of social control for a similar range of offences serving as an extension of metropolitan powers and the policing of colonial populations. In the 1980s, Ian Duffield's research into non-European convicts transported to the Australian penal colonies revealed that perhaps as many as 1,000 convicts had been transported to Australia from British colonial possessions.²⁰ This led historians of the British diasporas to reconsider intra-colonial convict transportation flows in the context of the overall British transportation history. More recently, historians such as Clare Anderson, Diana Paton and Krystin Harman have joined Duffield, Leslie Duly and Candy Malherbe in turning the

¹⁸ For more on the intra-colonial transportation see Diana Paton, 'An "Injurious Population": Caribbean-Australian penal transportation and imperial radical politics', *Cultural and Social History*, vol. 5, no. 4, 2008, pp. 449–464; Ian Duffield, 'From Slave Colonies to Penal Colonies: the West Indian convict transportees to Australia', *Slavery and Abolition*, vol. 7, no. 1, 1986, pp. 25–45. Clare Anderson *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853*, Macmillan Press, Houndsmills 2000, Anderson, *Subaltern Lives*.

¹⁹ Paton, 'An "Injurious Population"', p. 451.

²⁰ Transportees from the Caribbean mostly arrived via metropolitan Britain. For more on black convicts from the Caribbean and Australia see Duffield, 'From Slave Colonies to Penal Colonies'; Malherbe, 'Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842'; Duly, "'Hottentots to Hobart and Sydney'", p. 39. For more on black convict in Australia see Ian Duffield, 'Daylight on Convict Lived Experience: The History of a Pious Negro Servant', in Peter Chapman, Richard Ely and Hamish Maxwell-Stewart, eds, 'Exiles of Empire: convict experience and penal policy 1788–1852' *Tasmanian Historical Studies*, Special Convict Issue, vol. 6, no. 2, 1999, pp. 29–62; Ian Duffield, 'Billy Blue: Power, Popular Culture and Mimicry in Early Sydney', *Journal of Popular Culture*, vol. 33, no. 1, 1999, pp. 7–22.

spotlight on this group of non-European convicts transported to the Australian penal colonies.²¹

The forced movement of individuals between destinations within the Indian Ocean could also be described as a ‘middle passage’. Emma Christopher, Cassandra Pybus and Marcus Rediker in their book, *Many Middle Passages*, point out that it is feasible to draw parallels between the slave trade and other forms of coerced migration.²² The Mauritian convicted slaves’ ‘middle passage’ commenced when they were ‘swept up’ by penal policies which drove the process of coerced migration. Other parallels may also be drawn between the transportation of convicts from India to Mauritius where the Indian convicts’ ‘middle passage’ was the crossing of the *kala pani* (black water).²³ Oceanic crossings as a slave or convict, or in the case of Mauritius, criminally convicted slaves, played into the hands of colonial authorities. Using strategies and language which tapped into cultural and religious fears and superstitions added to real and imaginary perceptions of terror and separation across oceans.

A Convicted Slave: Where to?

By the 1820s intra-colonial convict transportation between Britain’s far-flung colonies in the Indian Ocean gave these colonies an additional tool in dealing with local law and order problems. Intra-colonial flows commenced between British colonies such as Mauritius, Ceylon, the Seychelles, India, the Cape Colony, Penang and the Andaman

²¹ Anderson, *Subaltern Lives*; Paton, ‘An “Injurious Population”’, pp. 449–464; Krystin Harman, *Aboriginal Convicts: Australian, Khoisan and Māori Exiles*, University of New South Wales Press, Sydney, 2012; Duly, ‘“Hottentots to Hobart and Sydney”’, pp. 39–50; V. Candy Malherbe, ‘David Stuurman: “Last Chief of the Hottentots”’, *African Studies*, vol. 39, no. 1, 1980, pp. 47–64; Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony’, pp. 19–39. See also Cassandra Pybus, *Black Founders: The unknown story of Australia’s first black settlers*, Sydney, 2006.

²² Emma Christopher, Cassandra Pybus, and Marcus Rediker, *Many Middle Passages: forced migration and the making of the modern world*, University of California Press, Berkely, 2007, pp. 4–5.

²³ Anderson, *Convicts in the Indian Ocean*, p. 16.

Islands.²⁴ Convicted slaves from the British Caribbean were ‘channelled’ through English ports.

Throughout the transportation era, policy changes often reflected shifting political, economic and social environments both in the metropole and in the colonies. As Ian Duffield explains, the system of transportation and political decision making regarding transportees within the empire was often disjointed—a flawed instrument of bureaucratic and human intervention and bias, rather than a proficient machine.²⁵ In 1824, an example of this disjointed approach occurred. In line with processing West Indian slaves convicted to transportation and re-transported through English ports, London ordered the Cape Colony to transfer its slaves sentenced to transportation to England to await re-transportation to a penal colony. While this made sense in terms of the British Caribbean colonies, it was geographical nonsense elsewhere. Sensibly, in 1825 an act was passed authorising the governors of His Majesty’s possessions abroad to decide the destinations for convicts tried and sentenced to transportation outside Britain.²⁶ As a result, Cape convicts were transported directly to New South Wales.²⁷ Mauritius sent its first convicted slave sentenced in a civil court to New South Wales in 1825.

By the early 1830s, convict transportation had become a key state-sanctioned vehicle in the fight against crime within the British Empire. In Mauritius, the French-

²⁴ Hamish Maxwell-Stewart, ‘Transportation’, in Paul Knepper and Anja Johansen, eds, *Oxford Handbook of the History of Crime and Criminal Justice*, Oxford University Press, Oxford, 2015, pp. 639-640.

²⁵ Duffield, ‘Daylight on Convict Lived Experiences’, p. 29.

²⁶ Footnote 21, s. 17 of the Act, 1824, Geo IV, c 84, s. 4 of the Act of 1825, 6 Geo IV, c 69; Order-in-Council, 11 Nov. 1825’, in Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842’, p. 24.

²⁷ Footnote 21, s. 17 of the Act, 1824; Order-in-Council, 11 Nov. 1825, p. 24, in Malherbe, ‘Khoikhoi and the Question of Convict Transportation from the Cape Colony, 1820–1842’, p. 24.

Mauritian population stood at 6,489, dwarfed by the slave population which numbered 69,476. An additional 18,039 were free Mauritians (often referred to as *gens de couleur*).²⁸ For the Mauritian administration the abolition of slavery loomed as a potential law and order disaster, with expectations of increased crime, lawlessness and riots as the slave population adjusted to their changed status. These concerns fuelled fear and paranoia among the minority white population. Hence, the option of penal transportation sent a strong message to the colonial subjects of the consequences of criminal behaviours whether they were free or unfree, black or white, European, African, Indian or Chinese.

The Colonial Office in London was also becoming anxious regarding the potential for unrest among the large slave population in Mauritius. In 1831, Governor Charles Colville received instructions governing the transportation of criminally convicted Mauritian slaves. Secretary of State for Wars and the Colonies, Lord Goderich informed the Mauritian colonial administration that slaves convicted of crimes and under sentence to transportation were no longer to be sent to New South Wales.²⁹

In response to the instructions from the Colonial Office to cease sending Mauritian slaves to Australia, Governor Charles Colville wrote to the governor of the Cape, Sir Galbraith Lowry Cole, a former governor of Mauritius, regarding the 'expediency of

²⁸ Nagapen, Amédée, *Histoire de la Colonie: Isle de France – Île Maurice, 1721-1968*, Edition de l'Océan Indien, Rose Hill, 2010, p.72.

Richard Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, pp. 81-93.

²⁹ NAM, RA 121, letter from Charles Coleville governor of Mauritius to Sir Lowry Cole, governor of the Cape, 20 Oct. 1831; CO 169/01, Ordinance no. 6 modifying certain provision of the penal code, 7 Aug. 1793, 12 May 1834, 'Persons condemned to irons shall be transported to such Dependencies of the British Government as will be pointed out by his Excellency the Governor, where they are to serve their time according to the customs and usage of the place.'

removing' slaves under sentence to transportation to Robben Island.³⁰ This urgency was predicated on the need to stem the tide of an anticipated crime wave as the abolition of slavery appeared imminent. When Colville requested permission to transport slaves to Robben Island, he was keen to reassure Governor Lowry Cole that the Cape would not be flooded with convicted slaves from Mauritius.³¹ Thus, a convict's status as free or unfree became an important criterion when determining the penal destination.

This change in policy may have been related to the lack of perceived merit and validity of transporting convicted slaves to a penal colony. Was the punitive impact on the criminally convicted slave, who was already unfree, adequate when freedom was the 'reward' at the end of the sentence? Would sending convicted slaves to a penal colony have less of a deterrent effect? These questions were likely at the forefront of colonial administrators' minds when they decided to send slaves to serve their sentences in another slave colony. Diana Paton points to the dilemma of punishing slaves when a 'punishment relying on the deprivation of personal freedom made little sense to those who were already unfree.'³² Perhaps the belief that transporting convicted slaves from one slave colony to another added to an unspoken narrative of being re-sold into slavery, in addition to the terror of maritime dislocation, family separation and cultural and linguistic uprooting. Another possible reason for this redirection of convicted slaves may be found in the realisation that as the emancipation of the Empire's slave population was beginning to look like a *fait accompli*, there were fears that established penal colonies, such as New South Wales

³⁰ NAM, RA 121, letter from Charles Colville to Sir Lowry Cole, 20 Oct. 1831.

³¹ NAM, RA 121, letter from Charles Colville to Sir Lowry Cole, 20 Oct. 1831.

³² Paton, 'An "Injurious Population"', p. 455.

and Van Diemen's Land, would be flooded with former slave colonies' most 'undesirable' colonial subjects.

In all, the Mauritian authorities transported 15 convicts to Robben Island. It is worth noting that no women transportees were shipped to the island prison. This may be due to the fact that Robben Island was considered an extremely harsh penal settlement with no specific women's prison. Between 1832 and 1835 Mauritius transported 12 convicted slaves, one recidivist government apprentice and two Indian convicts, initially transported to Mauritius from India.³³ Of these, three drowned at sea and the slaves Adrien and Isidore most likely died on Robben Island as no records exist of these two convicts after 1835.³⁴

Five of the Mauritian convicts transported to Robben Island reappear in the Australian convict archives.³⁵ The slave Jeannot was sentenced to transportation for life following a burglary in September 1832.³⁶ In September 1833, another slave Hypolite, *en état de récidivé*, was also sentenced to transportation for life for a series of burglaries.³⁷ Louya, also a slave and a repeat offender, was sentenced to transportation for 14 years for burglary and theft.³⁸ Felix, the criminally convicted slave from St Helena, initially sentenced to serve seven years in Mauritius was re-transported for an

³³ NAM, JB 242, trial of Narahime and Bourdaye, verdict of the Court of Assizes, 17 Apr. 1832; NAM, RA 121; return of convicts at Robben Island pertaining to Mauritius, under sentence of transportation, 21 Dec. 1839; For more on the two Indian convicts see Anderson, *Subaltern Lives*, pp. 46-48; NAM JB 233, Court of Assizes, trial of Malgache, (alias_Petit_Jean) 1 Apr. 1834.

³⁴ NAM, RA 121, letter from John Bull, Government House, Cape Town to G. F. Dick regarding the number of Mauritian convicted slaves on Robben Island, 5 February, 1835.

³⁵ Convicts transported to Robben Island appear in trial records in Australian archives as a result of being listed as co-accused with convicts transported to New South Wales or Van Diemen's Land or as re-transported convicts from Robben Island

³⁶ NAM, JB 232, Court of Assizes, trial records of Jeannot, 13 Sep. 1832.

³⁷ NAM, JB 253, Court of Assizes, trial records of Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833; SRNSW NRS 1155, 2/8255, Court of Assizes, trial summary for Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833, pp. 49-60.

³⁸ SRNSW, NRS 1155, 2/8255, Court of Assizes, trial summary of Louya and Jean Baptiste, 23 Apr. 1834, pp. 187-193.

additional 10 years for burglaries committed in Mauritius in 1833 and 1834.³⁹ The government apprentice Malgache, alias Petit Jean, was sentenced to seven years' transportation. Malgache's status as 'free' appears to have been of little consequence when he was transported to Robben Island, showing that local considerations overrode metropolitan policy when the governor saw fit. This also highlights the concerns of the Commission of Eastern Inquiry about government apprentices being treated like slaves.⁴⁰ The recidivist Indian convicts, Narahime and Bourdaye, were re-transported to Robben Island after committing a violent robbery in Mauritius.⁴¹

The only slaves transported directly from Mauritius to New South Wales after October 1831 were the child slaves Constance and Elisabeth.⁴² They had both been sentenced to transportation for life for attempted murder.⁴³ In response to a request about where to send the two slave girls, Police Commissioner John Finniss replied in September 1833 that condemned slaves were 'always' to be sent to Robben Island, 'unless instructions be given to the contrary'.⁴⁴ After some considerable deliberation Elisabeth

³⁹ SRNSW, fiche 653, SRNSW, R 397 pics, 1826, SRNSW, fiche 640. Felix (Rouke) was initially sentenced to transportation for pig stealing on St Helena in the Atlantic Ocean in April 1826. He arrived in Mauritius in 1827 to serve a sentence to transportation for seven years. He was re-transported from Mauritius to Robben Island following two burglaries committed in Mauritius in 1833 and 1834. Felix was again re-transported to New South Wales in 1837, 10 years after he left St Helena. In the Australian convict records he is noted as a gentleman's servant, literate and a protestant.

⁴⁰ SRNSW, NRS, 1155, 2/8266, Court of Assizes, trial of Malgache, (alias Petit Jean) 1 Apr. 1834, pp. 93–97. He arrived in New South Wales on *Lady Nugent* in 1836. SRNSW, fiche 719/908, p. 169.

⁴¹ NAM, RA 121; return of convicts at Robben Island pertaining to Mauritius, under sentence of transportation, 21 Dec. 1839. These two convicts were freed and returned to India in 1840. See also Anderson, *Subaltern Lives*, p. 48.

⁴² See Chapter Two in this thesis. SRNSW, NRS 2/8255, Supreme Court, extract from the minutes, Constance Couronne and Elisabeth Verloppe, 24 Sep. 1833, pp. 81–86; Deborah Oxley, *Convict Maids: the forced migration of women to Australia*, Cambridge University Press, Cambridge, 1996, p. 255.

⁴³ Paragraph 238 of the penal code of 1832 states that 'All guilty of murder (assassination) of parricide, of infanticide or poisoning shall be punished by death.' Paragraph 57 of the same code states that 'If it is decided that the accused, whom are less than sixteen years of age, have acted with sound judgment (discernment), the sentences imposed by the law must be modified according to the circumstances.' In the case of Constance and Elisabeth that meant transportation for life. SRNSW, NRS 1155, 2/8255, Supreme Court, extract from the minutes, Elisabeth Verloppe and Constance Couronne, 24 Sep. 1833, pp. 81–86.

⁴⁴ NAM, RA 510, response from Police Commissioner John Finniss to G. F. Dick, 28 Sep. 1833.

and Constance, due to their tender ages and their gender, were transported to New South Wales.⁴⁵

Although small in number, these transportations and re-transportations show the flows of convicts between British slave and penal colonies in the Indian Ocean region and in the case of Felix, from St Helena in the Atlantic Ocean. The option of sending Mauritian convicted slaves to Robben Island closed with the abolition of slavery in 1835. In September 1840 there were still three Mauritian ex-slaves on Robben Island. In a letter from the Governor of the Cape, George Napier, to the then Governor of Mauritius, Sir Lionel Smith, regarding the Mauritian convicts, Sargine, Paul and Thomy, Napier wrote:

I brought their cases under the consideration of the Sec of State [*sic*] recommending that if they had been tried by courts here they would have received commutation ... & that the confinement on Robben Island is 'more rigorous' than they would have suffered in New South Wales.⁴⁶

Napier added that their stay on Robben Island had inflicted a more severe punishment than 'the court intended to inflict'.⁴⁷ After consultation with Lord John Russell, the recommendation to discharge these three convicts due to their 'exemplary' conduct while on the island was carried out.⁴⁸ A note from Governor Smith to Henry Bury, chief law clerk in Mauritius, suggests that the court order of transportation was still in place in February 1840. The note was questioning where to relocate these three

⁴⁵ The Mauritian authorities, having decided to spare the girls the trauma of Robben Island, delivered the two slave girls on board *The Dart* for the journey to New South Wales, SRNSW, ships list, *The Dart*, fiche 709/75/907; James Bradley and Cassandra Pybus, 'From Slavery to Servitude: the Australian exile of Elisabeth and Constance', *Journal of Australian Colonial History* vol. 7, 2007, pp. 29–50.

⁴⁶ NAM, RA 570, letter to Sir Lionel Smith from George Napier, 1 Sep. 1840.

⁴⁷ NAM, RA 570, letter to Sir Lionel Smith from George Napier, 1 Sep. 1840.

⁴⁸ NAM, RA 570, letter to Sir Lionel Smith from George Napier, 1 Sep. 1840.

prisoners. Frustratingly, it states that the decision was ‘left entirely to the Executive’ a council made up of the governor and three officials.⁴⁹ The destination of the three convicts after leaving Robben Island remains unknown.

Consequences of Freedom and Unfreedom

In the 1830s the dichotomy between race and status was still fluid but was becoming increasingly important. Since French occupation, the changing social landscape of shifting identities influenced by European, African and Asian cultures made Mauritius a complex multi-ethnic society and ethnic labelling in Mauritius therefore included several sub-categories.⁵⁰ Hence, race or social labelling was not always a ‘reliable marker’ of economic, social or legal status.⁵¹

In a slave society, a slave had always be recognised as having a ‘legal personality’ which carried with it moral and legal responsibilities followed by a punishment for his or her crime/s.⁵² A slave also had freedom of choice; to obey or disobey, to run away or stay, to revolt, lie, steal, injure, kill, destroy property or destroy himself.⁵³ The confluence of the criminalisation of slaves, legally sanctioned slave discipline, social control and legal practices shows the complex interplay between slavery, status, crime and the law. John Savage concludes that transportation of slaves ‘required recognition

⁴⁹ Similar Executive Councils were established in the slave colonies of Trinidad and St Lucia. Marina Carter and Raymond D’Unienville, *Unshackling Slaves: liberation and adaptation of ex-apprentices* (British Mauritius collected documents), Pink Pigeon Books, London, 2001 p. 1.

⁵⁰ The population was divided into white, *gens de colour* (mostly free) and slaves. Pierre Rosario Domingue, ‘The Historical Development of the Mixed Legal System of Mauritius during the French and British Colonial Periods’, *University of Mauritius Research Journal (Law, Management and Social Sciences)*, vol. 4, 2002, p. 63.

⁵¹ Megan Vaughan, ‘Slavery and Colonial Identity in Eighteenth-Century Mauritius’, *Royal Historical Society*, vol. 8, 1998, pp. 197–198.

⁵² Patterson, *Slavery and the Social Death*, p. 22.

⁵³ Patterson, *Slavery and the Social Death*, p. 173.

of their full humanity' acknowledging the 'emotional deprivation' in the form of loss of kinship and other social relations because of transportation.⁵⁴

In Mauritius, slaves were subject to a version of *Code Noir*, which had been in place since 1723.⁵⁵ Evidence suggests that from the early 1820s up until the abolition of slavery in 1835, the Mauritian courts would interchangeably apply *Code Noir* and the French *Code Pénal* of 1791.⁵⁶ The penalties in both codes were exact and descriptive with a 'system of fixed punishments'.⁵⁷ Considered legally responsible in a court of law, slaves were also entitled to legal representation. Some slaves refused, often as a form of protest or as acts of defiance. In such cases, the court appointed legal representation.

When a slave was tried using the French *Code Pénal*, the court requested additional assurances regarding the slave's criminal intent. Azor, a slave belonging to Eugène Modeste, faced charges of theft by night at the house of Widow Cirage Ally. In the Court of Assizes on 21 April 1834, prior to imposing a sentence, the court needed to establish if he had acted with '*discernment*'.⁵⁸ By asking if 'sound judgment' was applied to a criminal act, the court adopted a paternalistic attitude, questioning the slave's ability to make independent, albeit criminal, decisions. The court eventually resolved Azor's guilt in the affirmative and concluded that he had acted with

⁵⁴ John Savage, 'Unwanted Slaves: the punishment of transportation and the making of legal subjects in early nineteenth-century Martinique', *Citizenship Studies*, vol. 10, no. 1, 2006, p. 46.

⁵⁵ See Chapter One of this thesis regarding a slave's legal responsibility.

⁵⁶ Elisabeth Verloppe and Constance Couronne were two slaves tried according to the French *Code Pénal* in 1833. See Chapter Two of this thesis.

⁵⁷ Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, vol. 1: *the movement of reform*, Stevens & Sons Limited, London, 1948, p. 295.

⁵⁸ John Jeremie, the controversial general prosecutor was still in the colony during Azor's trial. SRNSW, NRS 1155, 2/8275, Court of Assizes, trial summary of Azor and Charles César, 21 Apr. 1834, pp. 65–70. I have translated '*discernment*' from French to mean 'sound judgment'. Other possible translations in this context are; acumen, discrimination, perspicacity or shrewdness.

‘*discernment*’ and found him guilty as charged.⁵⁹ He was sentenced to transportation for life – his status as a slave determining his penal destination as Robben Island.

Azor’s co-accused, Charles César, a free Mauritian Creole jeweller, was found guilty of knowingly receiving stolen goods from the slave. César’s status, as free, did not require the court to pose the question as to whether he had acted with ‘sound judgment’. On the other hand, César’s association with Azor as his accomplice had some serious repercussions for the Mauritian jeweller.⁶⁰ According to French criminal law, a free Mauritian’s sentence was dependent on the status of his co-accused. Azor’s slave status therefore had a significant bearing on the sentence imposed on the free César. Provisions in Article 52 of *Code Pénal* of 1832 stated that:

Those who knowingly have received the whole or part of things stolen, diverted or obtained by crime or misdemeanour shall also be punished – as accomplices to the crime or misdemeanour. When the stolen goods originated from theft committed by slaves, the receiver (fence) shall be condemned to transportation.⁶¹

César was sentenced to transportation for seven years.

Another case where the status of their accomplices decided the penalty was that of married couple Joséphine Ally, free, and Marcelin Currac, *an affranchi* (Chapter Two), tried with the slave Hypolite.⁶² Marcelin and Joséphine had not only received stolen goods from a number of slaves but had been harbouring marooned slaves in

⁵⁹SRNSW, NRS 1155, 2/8275, Court of Assizes, trial summary of Azor and Charles César, 21 Apr. 1834, pp. 65–70.

⁶⁰ SRNSW, NRS 1155, 2/8275, Court of Assizes, trial summary of Azor and Charles César, 21 Apr. 1834, pp. 65–70.

⁶¹ SRNSW, NRS 1155, 2/8275, Article 52 of *Code Pénal* of 1832, Court of Assizes, trial summary of Azor and Charles César, 21 Apr. 1834.

⁶² Refer to Chapter 2 of this thesis, pp 103-105. NAM, JB 253, trial of Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833; SRNSW, NRS 1155, 2/8255, pp. 49–60.

their house, which in itself was a criminal offence punishable by transportation or hard labour.⁶³ Considering their crimes Joséphine and Marcelin received the relatively lenient sentence of transportation for seven years.⁶⁴ Hypolite, a recidivist tried with the couple, was sentenced to transportation for life. The status of Paul Nanine's co-accused, the slave Sargine, also determined the free Mauritian Creole's penalty. Both Nanine and Sargine were sentenced to transportation for 10 years.⁶⁵ For the crime of receiving stolen bullocks Isidore Edmond was also sentenced to transportation for 10 years.⁶⁶ While no Mauritian trial record for Isidore Edmond was uncovered during the research for this thesis, his name and description of having a copper complexion, woolly black hair and black eyes, indicate slave status. However, the fact that his conviction to transportation saw him shipped to New South Wales and not Robben Island suggests that he most likely was a freed slave (*affranchi*) who had received the stolen bullocks from a slave or slaves.⁶⁷ As these examples indicate, Article 52 of *Code Pénal* referred to the collusion between the free and the enslaved in Mauritius.⁶⁸ The Court of Assizes sentenced the free Mauritians to transportation based on the crime being 'knowingly' committed in association with slaves.⁶⁹

⁶³ The Mauritian free population of colour by 1830 controlled between 15 and 20 percent of agricultural production including foods, spices and sugar. Prior to British annexation this figure had been around ten percent. Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, pp. 96–98.

⁶⁴ NAM, JB 253, trial of Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833; SRNSW, NRS 1155, 2/8255, pp. 49–60.

⁶⁵ SRNSW, NRS 1155, 2/8255, Court of Assizes, trial summary of Sargine and Paul Nanine, 26 Sep. 1833, pp. 41–46.

⁶⁶ SRNSW, fiche 691, SRNSW, 4/4018, SRNSW, NRS 2/8270, Isidore Edmond. Isidore arrived on *Merope* which had sailed from India via Mauritius to Van Diemen's Land where he was transferred to the vessel *Currency Lass* arriving in New South Wales in October 1834. His Australian convict records notes his profession as a butler and cook. He is able to read and write and his religion is Catholic.

⁶⁷ The fact that he is literate also points to him being an *affranchi*, as most slaves were illiterate. SRNSW, fiche 691, SRNSW, 4/4018, SRNSW, NRS 2/8270, Isidore Edmond.

⁶⁸ To this day Article 52 exists as a criminal code in Mauritius, but the section relating to the association with slaves has been omitted.

⁶⁹ SRNSW, NRS 1155, 2/8255, Court of Assizes, trial summary of Hypolite, 18 Sep. 1833, pp. 49–60; SRNSW, NRS 1155, 2/8255, Court of Assizes, trial summary of Sargine and Paul Nanine, 26 Sep. 1833, pp. 41–46; NAM, JB 253, trial of Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833; SRNSW NRS 1155, 2/8255, Court of Assizes, trial summary for Hypolite, Marcelin Currac and Joséphine Ally, 18 Sep. 1833, pp. 49–60.

As discussed above, the criminal interactions between free and unfree men and women not only influenced their sentences, but also their penal destination. Convicted free Mauritians were transported to the penal colony of New South Wales and convicted slaves were shipped to Robben Island. These categorisations were part of a complex pattern of punishments and penal destinations within an equally complex set of social constructs governing Mauritian society.

Race and Transportation Policy – Black or White?

In May 1837, Lord Glenelg informed the British Empire's many slave colonies that transportation of 'Negro Convicts' to Australia was to be discontinued.⁷⁰ Diana Paton suggests this halt in convict transportation was the result of 'racial and spatial politics of empire that coded Australia white and the Caribbean black' and that the colonial office wanted to 'ensure that the two did not mix'.⁷¹ Paton argues that the end to convict slave transportation from the Caribbean in 1837 related to metropolitan perceptions of Australia and the Caribbean as 'racially differentiated spaces'.⁷²

Alternative explanations for the end to convict transportation from the Caribbean slave colonies must however be considered in view of the fact that transportation of non-European convicts continued, even increased, from Mauritius to Australia for almost a decade after Caribbean convicts stopped arriving in the Australian penal colonies.⁷³

The reasons for ceasing the transportation flow from the Caribbean to Australia had been building for some time. By the early 1830s the debate about the abolition of

⁷⁰ TNA, CO/854/2, circular from Glenelg to other colonial legislatures, 25 May 1837.

⁷¹ Paton, 'An "Injurious Population"', p. 449.

⁷² Paton, 'An "Injurious Population"', p. 450.

⁷³ Convict transportation from Mauritius ended in 1845. The Cape colony continued to use Robben Island as a penal station until its closure in 1846.

slavery was at the forefront of public discourse. In the British public imagination, the Caribbean colonies held strong historical associations with the oceanic slave trade and the sight of convicted black slaves channelled through English ports awaiting re-transportation to Australia was becoming unpalatable to the new British sensibilities.⁷⁴ The most likely rationale behind the end to black convict transportation from the Caribbean to the Australian penal colonies was its cost prohibitive element of transporting convicts across vast oceans requiring a stopover port. Conversely, the geographical proximity, with its inherent cost savings, was the likely reason for the continued transportation of convicts from Mauritius to Australia.

The Mauritian trial records indicate that the number of transportees to the Australian penal colonies increased between 1835 and 1845. Almost 60 percent of all convicts were transported to the Australian penal colonies after 1838. Apart from three white male convicts tried in the civil criminal court of Assizes in Port Louis, all transportees were African, Mauritian Creole, Indian or Chinese.⁷⁵ The presence of Mauritian convicts in the Cape and Australia and Cape and Caribbean convicts found among the Australian convict population, as well as Indian convicts shipped to Mauritius shows

⁷⁴ As I will show in Chapter Seven of this thesis, in the metropolitan public imaginings, the state-sponsored Indian labour migration scheme, which commenced in Mauritius after the abolition of the apprenticeship scheme, did not conjure up the same associations with slavery, although in 1840 Lord John Russell in a parliamentary speech was concerned that once this new scheme was in full swing the Indian flow of labourers transferred from British India to the colony of Guiana (and eventually to other British colonies in the British West Indies) would be viewed as a 'new system of slavery'. TNA, PP 1840. XXXIV (121), Russell to Light, 15 Feb. 1840. For an in-depth discussion on Indian Indenture Migration in Mauritius see Hugh Tinker, *A New System of Slavery: the export of Indian labour overseas 1830–1920*, Oxford University Press, London, 1974.

⁷⁵ Around 60 court martialled soldiers were transported to the Australian penal colonies in the period on under investigation in this thesis. (1825–1845).

the colonial state's desire to use the reformist and idealistic rhetoric of law to control its colonial population.⁷⁶

The Mauritian transportation experience suggests that the Australian penal colonies did not adhere to a strictly 'white' policy. Paton may have been right in suggesting that there was a desire to keep Australia 'white' but in reality the administrations in New South Wales and Van Diemen's Land were not in a position to refuse transportees from other colonies. The directive issued in 1825 not to transport Indian Ocean criminally convicted slaves via English ports gave the governors of the colonies in the region discretionary powers with regards to the penal destinations of felons under sentence to transportation in their respective colonies. The transportation of convicts from Mauritius to New South Wales only ceased when transportation came to an end in New South Wales in 1840. Mauritius stopped sending convicts to Van Diemen's Land in 1845.

Conclusion

Reducing crime and maintaining social order, both domestically and in the empire's many colonies, came to underpin British penal ideology and policies throughout the whole of the convict transportation era. In Mauritius, as in the metropole, convict transportation became an important deterrent to crime and an essential punitive measure. Criminal liaisons between colonial subjects of different status (free and unfree) impacted both their sentencing and their penal destinations. Based on their status, free Mauritians under sentence to transportation were shipped to the Australian

⁷⁶ Ian Duffield, 'Slave, Apprentice and "Khoisan" Spaces in Colonial Places: criminal transportation from the Cape colony to Australia as a site of contested power relation', Abstract (unpublished paper), 9-10 Dec. 1999, <http://iccs.arts.utas.edu.au/colonialplaces.html#duffield>.

penal colonies. Conversely, convicted slaves were transported to another slave colony to maximise the deterrent effect. This decision decentres race from the debate and instead foregrounds economic and deterrent factors as more important when choosing the penal destinations for its free and unfree colonial subjects.

In Mauritius, a lack of alternatives and pragmatic decision-making dictated the directional flow of convicts. For almost a decade after Jamaica sent its final transportees in 1837, Mauritian convicts continued to arrive in the Australian colonies. As a result of these established intra-colonial transportation practices the Australian penal colonies accepted convicts from a diverse range of ethnic origins as indicated by the arrival of convicts born in Africa, India or China, on Ceylon, in Saudi Arabia or in the Cape Colony. Once in Australia, however, these convicts' potential labour and skill sets appear to be of greater importance to the Australian penal colonies than the colour of their skin, their ethnic background or geographical origin.⁷⁷

Meanwhile the Mauritian plantocracy realised that the end to slavery in Mauritius was imminent and lobbied hard for compensation for the loss of their slaves. As we shall see in Chapter Five, once the labour force was no longer valuable property and the apprenticeship system was up and running, transportation became a more readily used form of punishment and the number of convicts transported to the Australian penal colonies increased. Much to the chagrin on the Mauritian plantocracy, the end to slavery within the British Empire was realised when the Slavery Abolition Act was

⁷⁷ The British Empire post-1763 was very multi-ethnic.

granted royal assent in London in 1833 and came into effect in the British West Indies on 1 August 1834, followed by Mauritius on 1 February 1835.⁷⁸

⁷⁸ TNA, CO 167/205, enclosure in Glenelg to Nicolay, Nov. 6, 1838.

CHAPTER 5

Severing the Chains: incremental freedom

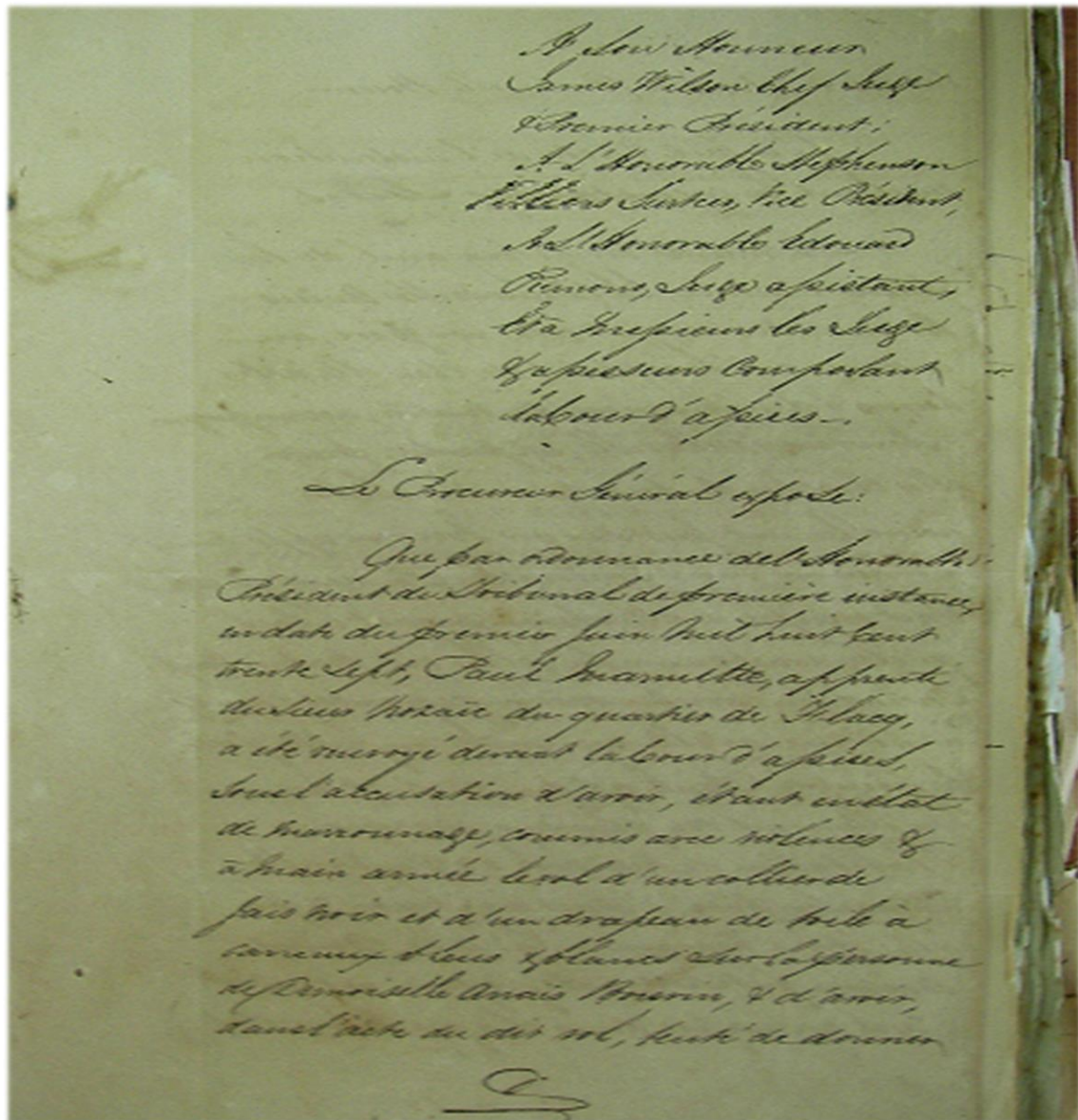


Figure 9 Trial records for Paul Marmette: NAM JB 282, Dec. 1837.

Il semblait que le mot magique de LIBERTE dut donner à cette classe ignorante tout ce qui lui manquait, esprit de conduite, prudence, industrie, économie, le vivre, le couvert and tout le reste.¹

The standard of morality cannot be expected to be very high in a place where slavery has been recently abolished. The curse of slavery is not confined to the slave; it extends also to the slaveholder and his descendants for successive generations. Power controlled by law, by moral principle, or by public opinion, must always have a deteriorating effect upon the oppressor, as well as upon the victims on whom it is exercised.²

Introduction

On 9 November 1837 a manhunt lasting several months finally came to an end with the capture of 25-year-old runaway Creole apprentice Paul Marmitte, wanted for attempted murder and violent robbery. He had been hiding out on the eastern side of the island in sugar cane fields and in the woods of the large sugar estate Beau Champ in the agricultural district of Flacq, Mauritius.³ The level of concern regarding the criminal behaviour of this apprentice, following a vicious attack on 16-year-old Anaïs Boisson on 25 April 1837, had seen a reward for his capture issued in early May.⁴ On the morning of the attack, Anaïs, who lived with her father Alexis, a manager on the property of widow Gondreville, also in the district of Flacq, had been gathering firewood near a forest clearing on the property with another young woman, Honorine Delaville. All of a sudden a young man came out of a nearby sugarcane field. Anaïs

¹ *Le Mauricien*, 28 Apr. 1847, p. 2, translation: 'It seemed that the magic word LIBERTY must give this ignorant class everything they lacked, spirit of conduct, prudence, industry, economy, livelihood, shelter and all the rest.'

² Patrick Beaton, *Creoles and Coolies or Five Years in Mauritius*, Nisbet, London, 1859, p. 47.

³ Lindsay Rivière, *Historical Dictionary of Mauritius: African Historical Dictionaries*, no. 34, Scarecrow Press, London, 1982, p. 47.

⁴ NAM, JB 282, letter from Police Commissioner John Finniss to Acting General Prosecutor, Edward Williams, 2 Jun. 1837.

immediately recognised him as the apprentice Paul, from the property of Mr. Nozaïc.⁵ She became alarmed when she saw he had a large stone in each hand, which he threatened to throw at her. When Anaïs started to scream, Honorine ran to fetch help. As Honorine ran towards the house, Paul tackled Anaïs and managed to place a rope with a noose around her neck. He violently dragged her along the ground into the middle of the field. Anaïs continued to cry out. Marmitte then threatened to kill her with his knife. As help approached, Paul robbed the petrified girl of her black jade necklace and a white and blue canvas banner and fled.⁶ The next day Anaïs reported the assault and the theft to the district police in Flacq.⁷

On 2 June 1837 Police Commissioner John Finniss, in a letter to the Acting General Prosecutor Edward Williams, expressed his frustration that Marmitte was still at large. Finniss informed Williams he had ‘ordered all Detachments to unite for his arrestation’.⁸ The initial search in the district of Flacq was fruitless. Paul, roaming the woods and sugar cane fields with other marooned apprentices, would have been familiar with his surroundings and able to stay out of sight. Finniss’s frustration further increased when, on 5 June, he again wrote to Williams regarding a new allegation against the apprentice. According to witnesses, Paul had tried to abduct an eight-year-old boy ‘with the intention to do him some bodily harm’.⁹ Finniss had

⁵ NAM, JB 282, trial of Paul Marmitte, 13 Dec. 1837.

⁶ NAM, JB 282, trial of Paul Marmitte, 13 Dec. 1837.

⁷ NAM, JB 282, doctor’s report, Anaïs Boisvin, dated 26 Apr. 1837. A doctor checked Anaïs’s injuries. Her injuries were consistent with having a tight rope around the neck and someone dragging her over hard ground.

⁸ NAM, JB 282, letter from Police Commissioner John Finniss to Acting General Prosecutor Edward Williams, 2 Jun. 1837.

⁹ NAM, JB 282, letter from Police Commissioner John Finniss to Acting General Prosecutor Edward Williams, 5 Jun. 1837. In interviews Paul Marmitte emphatically denied that he was the one who had tried to abduct the little boy.

delayed sending the documents regarding this latest accusation to Williams, as he had hoped the ‘culprit would have been taken before this.’¹⁰

The 1834 introduction of the apprenticeship system in former British slave colonies prompted similar concerns and apprehensions in both the Caribbean and the Indian Ocean. The new labour system meant that the state would take over the punitive role previously held by slave owners. This transfer of powers would bring many apprentices into ‘direct conflict with the state’.¹¹ This chapter will discuss the introduction of the apprenticeship system in Mauritius. It will also examine the role and punitive powers of the newly appointed stipendiary magistrates. This chapter will argue that there was a link between the need to control workers within this new labour structure and the excessive use of state-sanctioned corporal punishment. The responses by the Mauritian administration and the courts to the introduction of apprenticeships and how this affected convict transportation will also be discussed.

The Apprenticeship System

The legal framework covering apprenticeship, which replaced the institution of slavery, came into effect in all British slave colonies, including Mauritius, by the Order in Council of 17 September 1834.¹² As Diana Paton explains, the reorganisation of state responsibilities and power, within the framework of the apprenticeship legislation, saw the state take on the role of both ‘liberator’ and ‘enforcer of labour

¹⁰ NAM, JB 282, letter from Police Commissioner John Finnis to Acting General Prosecutor Edward Williams, 5 Jun. 1837.

¹¹ Diana Paton, *No Bond but the Law: punishment, race and gender in Jamaican state formation, 1780–1870*, Duke University Press, Durham, 2004, p. 54.

¹² TNA, PP. L 278. 1835, ‘papers in Explanation of Measures Adopted by His Majesty’s Government, for Giving Effect to the Act for the Abolition of Slavery throughout the British Colonies’, Part II, 1833–1835, pp. 372–89. In Mauritius this Order in Council was effective from 1 February 1835.

discipline'.¹³ Up until the introduction of apprenticeship, slavery, both as an ideology and a system, had formed the fundamental building blocks underpinning the cultural, social, economic and political life in Mauritius. The institution of slavery had existed within a coercive legally sanctioned framework designed to 'prevent the emergence of competing modes of social organizations'.¹⁴ Plantation slavery, as Eric Foner explains, had been an 'agent for European colonization, a means of staple agricultural production within an expanding world capitalist market and the incubator of a highly stratified system of race relations'.¹⁵ The role of colonial authorities and populations during slavery and apprenticeship was to provide the metropole with 'cheap raw materials' and secure profits through cheap labour for invested companies and individuals.¹⁶

Most historians recognise that the apprenticeship system was designed as an incremental form of emancipation. Within this labour system the important concepts of the 'meaning of freedom' and indeed the 'problem of freedom' needed to be contextualised judiciously, socially, politically and economically.¹⁷ Moses Nwulia claims that, as a labour extraction scheme, the apprenticeship system preserved rather than broke the patterns of master-servant interaction.¹⁸ M. D. North-Coombes explains

¹³ Paton, *No Bond but the Law*, p. 54.

¹⁴ Eric Foner, *Nothing but Freedom: emancipation and its legacy*, Louisiana State University Press, Baton Rouge, 2011, p. 10.

¹⁵ Foner, *Nothing but Freedom*, p. 9.

¹⁶ Deryck Scarr, *Slaving and Slavery in the Indian Ocean*, Macmillan Press Ltd, Basingstoke, 1998, p. 54.

¹⁷ Steven Hahn, 'Foreword' in Foner, *Nothing but Freedom: emancipation and its legacy*, Louisiana State University Press, Baton Rouge, 2011, p. xii-xiii.

¹⁸ Moses Nwulia, 'The "Apprenticeship" System in Mauritius: its character and its impact on race relations in the immediate post-emancipation period, 1839–1879', *African Studies Review*, vol. 21, no. 1, 1978, p. 89.

that although ‘legally freed’, apprentices were still tied to their former masters.¹⁹

Naomi Andrews states that the introduction of the apprenticeship system was a continuity of both the mindset and practices inherent in slavery, only in a different guise.²⁰

The means by which ‘free labour’ was to supplant slavery in Mauritius and other slave societies became a contested process. The ideological discourses concerning the definitions and parameters of emancipation and labour, both in the colonies and the metropole, shaped the first phase of emancipation. Metropolitan policy makers envisaged the apprenticeship system would serve as a compromise between pro- and anti-slavery lobbies. Equally, the political premise for implementing the apprenticeship system rested on the notion that it would straddle the gap between slavery and freedom. Both policy makers and those implementing the new labour scheme acknowledged its social complexities while simultaneously defending its *raison d’être*.

Throughout the British Empire the concept of freedom had to be configured as a legal and social construct within a new master/apprentice dichotomy. The abolition of slavery was to emerge through a process of redefining the status of the slave population. Once the abolition of slavery was a reality, the question of the status of the freedmen became crucial to the interpretation of freedom and the new social order.

Foner suggests ‘[t]he pivot on which the social conflict turned was the new status of

¹⁹ M. D. North-Coombes, ‘From Slavery to Indenture: forced labour in the political economy of Mauritius 1834–1867’, in Kay Saunders, ed., *Indentured Labour in the British Empire 1834–1920*, Croom Helm Ltd, Kent, 1984, p. 79.

²⁰ Naomi Andrews, ‘Breaking the Ties: French romantic socialism and the critique of liberal slave emancipation’, *Journal of Modern History*, vol. 85, no. 3, 2013, p. 492.

the former slaves'.²¹ As Paton cleverly puts it with regard to the British Caribbean colonies, '[a]pprentices were apprenticed not to any specific trade but to the status of freedom itself'.²² This was also true in the Mauritian context as this colonial society adjusted to dramatic social changes in the aftermath of the abolition of slavery.

A 'state-organised system of coercion' with rules governing apprenticed labour clearly defined the obligations of the new workforce.²³ The aim of the apprenticeship system was to inculcate good work habits in the emancipated population in preparation for freedom. In Mauritius, depending on the work, the apprentice was to serve between four (domestic slave) and six (praedal [field working] slave) years.²⁴ The apprentice was to perform 45 hours of compulsory, unpaid work per week for his or her former slave master, Sundays and holidays excluded.²⁵ In return the apprenticeship scheme was to deliver new and useful skills to ex-slaves. The scheme also ensured that apprentices were fed, clothed and housed.²⁶ Once the weekly work obligation had been fulfilled, the apprentice was free to continue paid work for his master, work for himself or take other paid employment.²⁷ As with other former slave populations throughout the British Empire, Mauritian apprentices were often thwarted in their

²¹ Foner, *Nothing but Freedom*, p. 1.

²² Paton, *No Bond but the Law*, p. 57.

²³ Paton, *No Bond but the Law*, p. 53.

²⁴ Moses Nwulia, *The History of Slavery in Mauritius and the Seychelles 1810–1875*, Associated University Presses, East Brunswick, 1981, p. 144.

²⁵ Nwulia, *The History of Slavery in Mauritius and the Seychelles 1810–1875*, p. 146.

²⁶ Praedal apprentices were allocated a provision ground on the master's estate. Vijayalakshmi Teelock, *Mauritian History: from its beginnings to modern times*, Mahatma Gandhi Institute, Moka, 2009, p. 216.

²⁷ North-Coombes, 'From Slavery to Indenture', p. 83.

attempts to gain alternative employment outside the plantation economy.²⁸ At its core, the apprenticeship scheme did not offer apprentices economic autonomy.²⁹

Another of the main objectives of the apprenticeship scheme was to ‘civilise’ the workforce. The process of civilising was to emerge through the establishment of a social environment where ex-slaves would start to question their aspirations and make them discontent with their lack of civility and standard of living. This process would develop ‘internal discipline’ and make ex-slaves ‘receptive to the discipline of free labor’, and importantly, ensure a dependable and efficient free work force.³⁰

Marronage: Runaway Apprentices

The legislative framework applied to apprenticeship did little to promote improved master and apprentice relationships. The new apprenticeship system, supported by labour laws and policies, continued an already embedded coercive form of labour practice and did not curtail one of the enduring problems of slavery—marronage. At the time of the attack on Anaïs Boisson, Paul Marmitte had been on the run for around six months.³¹ Before fleeing, Paul stole a calf from his master and slaughtered it in a nearby cane field. Was this revenge for ill treatment? Had Nozaïc, as an employer, not fulfilled the provisions governing the rules of apprenticeship? Frustratingly, there is not a hint of an answer to these questions in the trial records or any reference to the obviously troubled relationship between employer and apprentice other than Paul’s

²⁸ Hahn, ‘Foreword’ in Foner, *Nothing but Freedom*, p. xiv.

²⁹ Gwyn Campbell, ‘Introduction: abolition and its aftermath in the Indian Ocean World’ in Gwyn Campbell, ed., *Abolition and its aftermath in the Indian Ocean World*, Routledge, New York, 2005, p. 2-4.

³⁰ Thomas Holt, *The Problem of Freedom: race, labor, and politics in Jamaica and Britain, 1832–1938*, The John Hopkins University Press, Baltimore 1992, p. xxii.

³¹ NAM, JB 282, trial of Paul Marmitte, 13 Dec. 1837.

overt action of marronage. He had obviously decided that a life on the run was preferable to being a bullock driver for his former owner.³²

Most apprentices felt ‘cheated out of emancipation’.³³ In reality they had two options—run away or toil under slave-like conditions for their former owners. Their keen sense of injustice fuelled a continuing high rate of marronage in Mauritius throughout the apprenticeship period. Post slavery, the apprenticed population in Mauritius numbered just over 54,000. Between 1835 and 1837, Paul Marmitte was one of almost 13,000 apprentices who ran away from their employer for short or long periods, often repeatedly, some returning of their own accord while many others were captured.³⁴ As was the case with Paul, many of his fellow maroons committed multiple crimes during their time on the run, creating heightened social tensions in the colony. Richard Allen has pointed out that for decades after slave emancipation the ‘maroon legacy’ in Mauritius ‘influenced social and economic relationships’.³⁵

The atmosphere and attitude surrounding the behaviour of apprentices are further underscored by the fact that marronage laws, a legacy of slavery, were amended rather than abolished under the apprenticeship system in Mauritius. The hunting down of absconding apprentices was reminiscent of similar search parties in operation during slavery, corroborated by the detachments sent out, on instigation of Police

³² Paul Marmitte, ship’s description; lost two front upper teeth, cross scar on upper part of nose, two small scars on centre of forehead, diagonal scar over left eyebrow, nose short and broad, lips thick, scar on back of lower right arm, two round scars on cap of right knee. Man of colour. TAHO (misc manuscripts), 732/054/908, *Regia*, 9 Feb. 1838.

³³ Teelock, *Mauritian History*, p. 214.

³⁴ Teelock, *Mauritian History*, p. 219.

³⁵ Richard Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, pp. 37, 35 and 75. For Allen’s extensive and comprehensive figures on marronage see Chapter Two of this publication, pp. 53–54. Allen has calculated that around eight percent of apprentices were recaptured after deserting plantations during the apprenticeship period.

Commissioner Finniss, to search for Paul Marmitte after his attack on Anaïs Boisson. Many of these detachments were still on full alert in 1838, only months before the declaration of full emancipation of all apprentices.³⁶ As an incentive, rewards were often attached to the capture of runaway apprentices, as had been the case during slavery. While the sum offered for Paul Marmitte's arrest was not disclosed in the correspondence between Finniss and Williams, it is thought almost £6,000 was given in rewards for the capture of apprentices.³⁷

Paul Marmitte's trial records offer a glimpse into the mood and tensions existing in the Mauritian community as well as encapsulate the anxiety experienced by the local law enforcement authorities. During Paul's trial in the Court of Assizes in December 1837 the level of concern was underscored by the court taking the unusual step of commenting on the *terreur* (terror) which had spread throughout the community, and particularly in the district of Flacq, as a result of Paul's crime spree (possibly in concert with other marooned apprentices).³⁸ Rarely did Mauritian courts, when administering criminal justice according to the French criminal legal system, record or comment on the effect of criminal activities on Mauritian society. Conversely, Diana Paton explains that in Jamaican courts, where the less-rigid British legal system was the foundation for criminal justice, judges were at liberty to use the official forum of the courts to comment on crime and punishment in relation to broader social issues and the courts were part of the deliberate theatricality of the law.³⁹ The Mauritian Court of Assizes in this instance may have sought to employ a similar tactic and take

³⁶ NAM, JB 282, letter from Police Commissioner John Finniss to Acting General Prosecutor Edward Williams, 2 Jun. 1837.

³⁷ NAM, JB 282, letter from Police Commissioner John Finniss to Acting General Prosecutor Edward Williams, 2 Jun. 1837; Teelock, *Mauritian History*, p. 219.

³⁸ NAM, JB 282, trial of Paul Marmitte, 13 Dec. 1837.

³⁹ Paton, *No Bond but the Law*, p. 158.

on the additional role of not only severely punish apprentices who came before the court but also voicing the community's fears. On the other hand, Paul Marmitte's subaltern voice is silent on issues such as his nominal freedom as an apprentice, the injustice of a 'legally free' person performing unpaid labour for his former slave master and the use of corporal punishment for breaching the rules governing apprenticeship.

State-Sanctioned Punishments: the role of stipendiary magistrates

A stipendiary magistrate had to sanction the punishment of apprentices for non-compliance of their contractual obligation, including marronage. Specially appointed and financed by the British government, stipendiary magistrates arrived in the former slave colonies throughout the British Empire to mediate between former owners and their ex-slaves. Recruited stipendiary magistrates were often former military or naval personnel accustomed to serving the empire abroad under difficult conditions. Stipendiary magistrates from these professions were more likely to enforce corporal punishment than those who came from other occupational backgrounds.⁴⁰

The position of a stipendiary magistrate was not for the faint-hearted. Many resigned their posts after a relatively short time and returned to Britain. Those who remained were often overworked and underpaid and carried out their duties under the very strict guidelines of apprenticeship. Apart from attending a weekly court session, the stipendiary magistrate was required to visit the prisons. A stipendiary magistrate's duties also included fortnightly visits to the larger estates (40 or more apprentices), as

⁴⁰ Holt, *The Problem of Freedom*, pp. 57–58.

well as mediating in other non-estate based settings where apprentices were employed.⁴¹ The stipendiary magistrate often took part in the negotiations when setting the price for apprentices applying for manumission. The office of the stipendiary magistrate has often been criticised for being too entangled with the former slave-owning elite to adequately protect apprentices.⁴² The role they played as wage and labour contract negotiators is a case in point. Eric Foner on the other hand suggests that the planters often resented the intrusion of the stipendiary magistrate, accusing some of meddling in disciplinary matters.⁴³

The stipendiary magistrate kept the governor of the colony informed on matters concerning apprentices. Reports were also regularly dispatched to London. These dispatches included information regarding the mortality rate among apprentices, the relationships between former masters and ex-slaves as well as reporting on criminal offences committed by apprentices. Apprentices who were in a position to negotiate or buy their freedom wanted to distance themselves from the plantation economy, create their own communities and own and cultivate their own land. Part of the stipendiary magistrate's brief was also to survey and report on these new fledgling diaspora communities, often considered a threat to the plantation economy.

Criminal acts committed by runaway apprentices, especially at night, kept Mauritian residents on guard and in a state of constant high alert. Property crimes, such as the theft of livestock, general household goods, building materials, tools and clothing were particularly common. Guillaume's crime is representative of some of the

⁴¹ Paton, *No Bond but the Law*, p. 59.

⁴² Teelock, *Mauritian History*, p. 215.

⁴³ Foner, *Nothing but Freedom*, p. 17.

apprentices tried and sentenced to transportation to the Australian penal colonies in the Court of Assizes during the apprenticeship period.⁴⁴ On 12 March 1837 Guillaume, a cook in the employ of Messrs Hunter and Arbuthnot, and an unnamed apprentice broke into the property of Jean François Dioré. They had obviously had the property under surveillance. With the owners away the two apprentices proceeded to empty the henhouse and in a big bag collected items of clothing, cooking pots from the house, tools (including two pick axes) and a tent from the shed.⁴⁵

The list of items, in particular the tent, the tools and the pots and pans indicate that these two were planning a getaway from their respective employers to set up camp somewhere on the island. Guillaume already had a history of running away from his master. What they did not know was that Dioré's gardener was still at the property. Surprised by the gardener's presence, Guillaume savagely attacked him with one of the pick axes leaving him seriously wounded, before they disappeared with the loot.

Opportunistic crimes like those committed by Paul and Guillaume led to the appearance of many apprentices before the Court of First Instance, which operated beyond the disciplinary powers and jurisdiction of the stipendiary magistrates. More serious crimes or repeat offenders had their cases transferred to the Court of Assizes where they faced harsh punishments, including overseas transportation. Paul Marmitte was eventually found guilty of 'being the carrier of a murderous weapon' and theft.⁴⁶

⁴⁴ SRNSW, NRS 1155/2/8279, Court of Assizes, trial summary for Guillaume, 29 Jun. 1837, pp. 325–333.

⁴⁵ SRNSW, NRS 1155/2/8279, Court of Assizes, trial summary for Guillaume, 29 Jun. 1837, pp. 325–333.

⁴⁶ SRNSW, NRS 1155, 2/8275, Court of Assizes, trial summary for Paul Marmitte, 13 Dec. 1837, pp. 129–135. There is no real explanation for Paul's attack on Anaïs Boisson. In his Australian indent, his

Paul, who according to the Court of Assizes records had terrorised the community of Flacq for months, was sentenced to transportation for 14 years. Guillaume was found guilty of breaking and entering and grievous bodily harm.⁴⁷ He was sentenced to transportation for 10 years.

At the heart of Paul Marmitte and Guillaume's criminal actions lay the initial offence of marronage. Other offences under the rules of apprenticeship included unexplained absenteeism (classified as desertion), resistance or subordination (individually or in groups), feigning illness, property damage and a host of other misdemeanours incurring penalties such as floggings, a jail term or other forms of punishment depending on the severity of the offence.⁴⁸ Had Paul Marmitte not committed other serious criminal offences, in addition to his status offence of marronage, his employer, Nozaïc, would have submitted an application to the stipendiary magistrate to punish the apprentice. It was then up to the stipendiary magistrate to sanction or dismiss the application. If the apprentice was guilty the stipendiary magistrate would consider an appropriate penalty. Offending female apprentices were often put in the stocks during the day instead of receiving corporal punishment, such as whippings with a cane.

The state, through the office of the stipendiary magistrate, often handed out severe punishments for breach of contract and other status offences during the apprenticeship period. According to Mauritian historian Vijayalakshmi Teelock, thousands of state-sanctioned floggings took place during the apprenticeship period for marronage and

crime is recorded as rape. When asked to state his offence he may have said he attacked a young girl and, as Paul Marmitte would have spoken little or no English, this was likely interpreted as rape. TAHO, 732/054/908, *The Regia*, 9 Feb. 1838 to Van Diemen's Land.

⁴⁷ SRNSW, NRS 1155/2/8279, Court of Assizes, trial summary for Guillaume, 29 Jun. 1837, pp. 325–333.

⁴⁸ Nwulia, *The History of Slavery in Mauritius and the Seychelles 1810–1875*, pp. 147–148.

other status crimes committed by apprentices. Teelock's claim is confirmed by the figures below. The correspondence between the Colonial Office and the Mauritian administration also show that corporal punishments in Mauritius far exceeded the figures in the Caribbean.⁴⁹

On 12 July 1836, Lord Glenelg at the Colonial Office in London had dispatched a circular to all colonies requesting a report containing the 'number and effect of the returns of punishment' handed out to apprentices by the stipendiary magistrates.⁵⁰ In his dispatch to Glenelg following this request, Governor William Nicolay in Mauritius referred to a letter dated 5 March 1836 from John Weir, stipendiary magistrate for the district of Port Louis, who reported that a total of 4,377 punishments had been authorised for the year of 1835. Of these, 3,500 were attributed to marronage.⁵¹ According to Governor Nicolay, the total number of apprentices on 31 March 1835 was 54,276.⁵² Table 1 below shows the breakdown of floggings and other forms of punishments inflicted on male and female apprentices in the first year of apprenticeship.⁵³

⁴⁹ Teelock, *Mauritian History*, p. 219. Guiana and Barbados 1 in every 1000, in Mauritius one in every 100 received a flogging.

⁵⁰ TNA, CO 167/189, dispatch no. 35 from Governor William Nicolay to Lord Glenelg, 23 Apr. 1836, in response to Glenelg's request for a report on the stipendiary magistrates' punishments of apprentices in the colonies. Glenelg's contemporaries did not readily understand his sympathy for indigenous peoples. <http://www.oxforddnb.com/view/article/11249?docPos=1>.

⁵¹ TNA, CO 167/189, letter from stipendiary magistrate for Port Louis, John Weir, to Governor Nicolay, 5 Mar. 1836.

⁵² TNA, CO 167/189, dispatch no. 21 from Governor Nicolay to Lord Glenelg, 29 Feb. 1836.

⁵³ TNA, CO 167/189 *Table 1 Extract of the Journal of the Special Justice of Port Louis* in letter from John Weir, stipendiary magistrate for Port Louis to Governor Nicolay, 5 Mar. 1836.

Table 1 Extract from the Journal of the Special Justice of Port Louis

Total number of punishment of apprentices for 1835		4,377
Males	a) by whipping (mostly with cane)	2,895
	b) otherwise than by whipping	313
Females		1,169

Source: TNA, CO 167/189

John Weir attributed the number of whippings to a group of ‘hardened offenders [who] are repeatedly brought before them, thereby tending to swell the list of punishments inflicted; whilst the number of apprentices habituated to the commission of crime is, proportionately, much less considerable.’⁵⁴ The above figures for 1835 show that one in four of all apprentices punished were female. The maximum number of whippings permitted per apprentice per punishment was 39. Other punishments available to the stipendiary magistrate included: up to three months’ hard labour; one month to sleep in the stocks; seven months and 16 days extra service; half wages forfeited; and wearing a ‘robe of disgrace’.⁵⁵

When these figures were forwarded to London, Glenelg was particularly disturbed by the high number of floggings. He wrote to Governor Nicolay that, when comparing the Mauritian figures with those for some of the smallest and least favourably situated West Indian colonies, ‘the monthly average of corporal punishment or compared with the whole population, is no more than one in every two hundred’.⁵⁶ In the colonies of Barbados and British Guiana, which had similar-sized populations to Mauritius, the

⁵⁴ TNA, CO167/189, dispatch no. 35 from Governor William Nicolay to Lord Glenelg, 23 Apr. 1836.

⁵⁵ TNA, CO 167/189, wearing a robe of disgrace is an interesting punishment the like of which was unusual by this time in non-plantation societies. This is further evidence that the Foucauldian transition does not work as neatly in the colonial world as it does in the metropole.

⁵⁶ TNA, CO 167/189, letter from Glenelg to Governor Nicolay, 12 Jan. 1837.

number of floggings dropped dramatically to one in every one thousand. In Mauritius it was one in one hundred. As an explanation for the high number of floggings, in his letter Weir stated that around 300 recidivist apprentices, of whom 150 were considered hardened criminals, had received the majority of the floggings. Glenelg calculated that, according to Weir's figures, the 150 repeat offenders would each have received 23 punishments. There is no record of the individual whippings. However, if each apprentice received anywhere near the maximum number of whippings per punishment (39), this would amount to almost 900 whippings for each of these recidivists over the first year of the apprenticeship period.

As an explanation for the glaring discrepancy in floggings, in particular between the Caribbean colonies and Mauritius, Governor Nicolay again relied on Stipendiary Magistrate Weir to justify the high number of corporal punishments. These apprentices, according to Weir, were a 'pest', 'who will be removed from temptation, the colony will get rid of persons who do no work, inflict much misery on their master, steal and join in every sort of mischief.'⁵⁷ Through the 'civilising' process of brutal whippings, confinement, sleeping in stocks or wearing robes of disgrace, Weir believed these apprentices would eventually become reformed characters and useful members of society.⁵⁸ As the above figures show, brutal floggings, at least in the initial phase of the experimental apprenticeship period, targeted those perceived to be

⁵⁷ TNA, CO 167/189, letter from Stipendiary Magistrate John Weir to Governor William Nicolay, 3 Mar. 1836.

⁵⁸ TNA, CO 167/189, letter from Stipendiary Magistrate John Weir to Governor William Nicolay, 3 Mar. 1836. Apart from the apprentices, other convicts transported in this period were Indian convict, Tajey Versay, who was re-transported from Mauritius to New South Wales after originally having been transported from India, NAM, JB 291, trial of Tajey Versay, 25 Jun. 1838. Another re-transportee was Felix Rouke, originally transported from St Helena in 1826, CON 160 R 12 Apr. 1826. He was re-transported to New South Wales in 1837, SRNSW, fiche 653, SRNSW, R 397 pics, 1826. Former soldier, Thomas McGee was convicted of murder in 1837. He was transported to Van Diemen's Land in 1838. NAM JB 260, trial of Thomas McGee, 23 Mar. 1837.

troublemakers and ‘pests’. These figures reflect both the level of anxiety attached to the possible loss of control over the apprenticed workforce and the brutality of the punishments inflicted on these supposedly ‘free’ labourers. Clearly, the brutality in the colony did not match the rhetoric of legal equality in the metropole with regard to the treatment of the emancipated slave population in Mauritius.

Legacies of Slavery

In reality, the anticipation, the high expectations, indeed the promise of freedom through apprenticeship did not eventuate, giving ex-slaves little ground for celebration. The distinction between slavery and apprenticeship was mostly semantic with little tangible impact on daily life. Within this troubled master/apprentice binary the Mauritian colonists, who had found it hard to accept the loss of their property, often sought to restore their former authority through familiar coercive plantation practices.⁵⁹ Planters’ common goal remained constant: to keep the plantation engines running at all cost fuelled by this ‘new’ apprenticed labour force.⁶⁰ Former slaves’ quest for autonomy, coupled with former slave masters’ desire to bolster profits saw the struggle over resources, land and labour continue.⁶¹ Thus, the co-dependency between former master and ex-slave became even more complex. Notwithstanding the apprentices’ desire for autonomy, the reasons many continued to work for their former masters had less to do with loyalty and more to do with being poor, ill prepared and politically powerless. The new ‘free’ apprentice labour structure, far from fostering collaboration, continued the practices inherent in slavery, upheld by a myriad of legal

⁵⁹ Holt, *The Problem of Freedom*, p. xxiii.

⁶⁰ These attitudes persisted regardless of the planters’ ethnic origin (mostly of European or Asian extraction) or the size of their land holding.

⁶¹ Andrews, ‘Breaking the Ties’, p. 492.

oppressive measures which became part of the state's new penal response to the apprenticeship system.

Additionally, the entrenched views of ex-slaves as inherently idle, lacking in discipline as well as having an inclination to live in squalor continued.⁶² Apprentices' supposed ignorance of how to handle money and a perceived tendency towards criminal activity did little to curb stereotypical attitudes about ex-slaves' lack of civility, which in turn reinforced ideas of the inferiority of race. In December 1845, more than 10 years after the abolition of slavery, Mr. Randall from the district of Moka reflected back on apprenticeship. The lingering attitudes are easily detectable. He wrote:

I have often heard apprentices say in the time of apprenticeship, that they had worked enough, and once their liberty gained they would go and repose their souls, to use their own expression, and this they have done and are still doing.⁶³

Many apprentices worked hard and defied Randall's views. Before the end of the apprenticeship era, 9,000 apprentices had been able to buy their freedom.⁶⁴

Highlighting the difficulty in changing the mindset of the colonial Mauritian administration, Article 5 of Ordinance 5 of 1835 proposed that criminally convicted apprentices were to be segregated from the rest of the prison population by placing them in a separate prison.⁶⁵ Ordinance 5 may have been an attempt to replace the

⁶² Hahn, 'Foreword' in Foner, *Nothing but Freedom*, p. xiv.

⁶³ TNA, PP. 147. (325) letter from F. M. Randall, Moka, 19 Dec. 1845, (the wage arrears controversy), in Marina Carter and Raymond D'Unienville, *Unshackling Slaves: liberation and adaptation of ex-apprentices*, (British Mauritius collected documents), Pink Pigeon Books, London, 2001, pp. 143-144.

⁶⁴ Teelock, *Mauritian History*, p. 218.

⁶⁵ *Code Noir*, the code governing the lives and work of the former slave population in Mauritius was no longer in use. Proposed ordinances such as Ordinance 5 may have been an attempt to replace *Code Noir* as a way of keeping apprentices 'in their place'. Teelock, *Mauritian History*, p. 65.

abolished *Code Noir*, which had governed the lives of slaves in Mauritius. The attempts at segregating apprentices was most likely meant to send a strong message to the apprentice population that universal freedom was still some way off. However, Glenelg at the Colonial Office emphatically rejected this ordinance as it contravened the ‘great principle of the legal equality of all classes of the King’s subjects in Mauritius and the necessity of observing the practical consequences resulting from that principle.’⁶⁶ Glenelg was concerned that by approving the segregation legislation it would constitute a denial of civil liberties (which in reality was non-existent). The notion of apprentices’ civil liberties in Mauritius again highlights the gulf between metropolitan perceptions and colonial reality.

In the Mauritian courts, changes were also implemented. Ordinance 6 of 1835, put forward on 9 March 1835, just over a month after the abolition of slavery in Mauritius, sought urgent modifications to ‘certain dispositions of the existing criminal laws and adding new dispositions’. It stated that:

... before the opening of the next assizes to mitigate the excessive severity of the Dispositions of the Penal Code of 7 August 1793 with regards to certain robberies in consideration of the population among which these offences are the most frequent and the different circumstances with which they are usually attended and to leave to the judges in the application of the punishment a latitude which is not allowed to them by the law or code now in force.⁶⁷

These proposed changes show the ongoing level of concern by the British regarding the rigidity of the French legal codifications and the severity of some of the punishments. The changed status of the slave population meant that criminal offences

⁶⁶ TNA, CO 167/8, Ordinance no. 5, Article 5 of 1835.

⁶⁷ TNA, CO 169/2, Ordinance no. 6, 19 Mar. 1835.

were subject to the French *Code Pénal* of 1791 (promulgated in Mauritius on 7 August 1793). As *Code Noir* no longer applied and the Court of Assizes only had very limited discretionary powers, the British turned their attention to amending the French penal code to allow the Court of Assizes wider discretionary powers with regard to sentencing. This would take into account the dramatic social changes which had just occurred in the colony during the transitional period of apprenticeship and the changed status (real or otherwise) of the former slave population.⁶⁸

Another enduring legacy of slavery in Mauritius which continued during the apprenticeship period was the practice of renting out or hiring labour on a weekly or monthly basis, reflecting the overlap between slavery and apprenticeship, freedom and unfreedom. Notices would frequently appear in newspapers, such as *Le Cernéen*, offering apprentice labour for hire to perform plantation work, domestic work or other chores.⁶⁹ To illustrate this, Louis Perdreau, former owner of cook and domestic apprentice Philogène Chicot, was able to hire out his apprentice's labour.⁷⁰ Perdreau may have placed a notice in one of the papers, to which Mr. St Guillaume, a shopkeeper in Port Louis, responded. A negotiation regarding the price for the weekly or monthly services of the 25-year-old Mauritian Creole apprentice would then take place. The average monthly wage was six *piastres*, of which the apprentice received two *piastres*. Philogène was in the employ of St Guillaume when he committed the offence which eventually saw him transported.

⁶⁸ As Chapter Three of this thesis shows, the Mauritian courts in the early 1820s also tried to reduce/alter a slave's sentence by mixing the slave code and the penal code in order to avoid the often brutal corporal punishments set out in the French *Code Noir* which governed the punishment of slaves in the colony.

⁶⁹ Teelock, *Mauritian History*, p. 217.

⁷⁰ NAM, JB 298, trial of Philogène Chicot, 10 Oct. 1838.

The trial records do not record how long Philogène had been in the service of St Guillaume. After midnight on 13 June 1837, another domestic servant who heard noises coming from the shop downstairs woke the shopkeeper. On inspection, St Guillaume found items of toiletries and several metres of cloth missing (he later found the cloth in the street not far from the shop). His hired apprentice was nowhere to be found and he called the police. Sometime later several police officers arrived at Perdreau's house to establish if Philogène had returned to his wife, also apprenticed to Perdreau. After searching the premises, a police officer found him hiding under her bed. When confronted, he confessed to the crime.⁷¹ As a repeat offender, Philogène's fate was sealed. In December 1834, while still a slave, he received a conviction for theft, having stolen from his master. Slave-owner Perdreau, who had a considerable vested economic interest in his property, saw Philogène returned to him after two years in prison. Found guilty of this latest crime, he was sentenced to transportation for 10 years.⁷² That Perdreau was able to hire out Philogène's labour, and separate him from his wife, illustrates the power former masters still had over apprentices, including the periodic break up of families and otherwise interfering with family links and relationships.⁷³

Stipendiary Magistrate Weir also alluded to the practice of hiring out apprentices in a letter to Governor Nicolay in March 1836. Weir supported anxious proprietors in their decisions to give permission for troublesome apprentices 'to hire themselves in town' in order to rid their labour force of these 'bad characters of whom nothing can be

⁷¹ NAM, JB 298, trial of Philogène Chicot, 10 Oct. 1838.

⁷² Again the Court of Assizes added additional years to the minimum sentence of seven years due to his recidivism and the fact that the crime had been committed at night. NAM, JB 298, trial of Philogène Chicot, 10 Oct. 1838.

⁷³ NAM, JB 298, trial of Philogène Chicot, 10 Oct. 1838.

made of on the estates'.⁷⁴ The way the apprenticeship system worked, however, meant that the planter would still earn extra money from the work of the 'troublemaker'. Another interesting aspect of this hiring of apprentices came to light during Paul Marmitte's interview at the police station in Flacq after his arrest in November 1837. When asked if the reason for his absence from his master's property was that his labour had been forcibly 'sold' by persons unknown or by some of his masters' other apprentices, Paul answered no.⁷⁵ Perhaps this line of questioning is not so curious when considering the practice in Mauritius of masters hiring out their slaves and, later, their apprentices. The interesting aspect is who the police thought had 'sold' him. The practice of apprentices selling apprentices or abducting marooned apprentices to sell their labour seems unusual, but since the question was asked we have to assume that trading in apprentices by apprentices may possibly have taken place.

Overseas Transportation during Apprenticeship

Apprentices committing non-status crimes were subject to the local criminal jurisdiction. Sentences varied from fines to imprisonment to more severe punishments such as penal transportation. In the first two years of apprenticeship (1835–1836) the Court of Assizes in Mauritius sentenced no convicts to transportation. No women were transported to the Australian penal colonies during the whole of the apprenticeship period (February 1835–March 1839). A reasonable assumption would be that when Glenelg disallowed the creation of a separate prison space for apprentices, the courts would consider the more permanent separation of offending apprentices through

⁷⁴ TNA, CO167/189, letter from Stipendiary Magistrate John Weir to Governor Nicolay, 5 Mar. 1836. However, in the process the planters would still earn an income from the apprentice.

⁷⁵ NAM, JB 282, interview with Paul Marmitte regarding his marooning, 10 Nov. 1837.

convict transportation in order to bolster the colonial administration's crackdown on crime in the colony. This did not occur.

The comparatively smaller number of convicts sent to the Australian penal colonies during the four years of apprenticeship, as opposed to after the abolition of this labour system, altogether supports Hamish Maxwell-Stewart and Clare Anderson's important point regarding the connection between penal transportation and the 'larger imperial history of labour, labour management and labour circulation'.⁷⁶ Their broader argument strikes a chord with the Mauritian experience of unfree labour systems and the penal practice of convict transportation. As discussed in Chapter Three of this thesis, historically, during times of social change and transitions the number of convicts sentenced to transportation usually increased. In Mauritius, however, during the first couple of years following the abolition of slavery and the introduction of the apprenticeship scheme, penal transportation came to a virtual standstill.⁷⁷ The fact that no criminally convicted apprentices were transported during this period is indicative of the environment of uncertainty surrounding the impact of this new labour practice and the availability of labourers to work on the sugar plantations. The courts thus reflected the fear that this form of punishment was counterproductive, as it would lead to the permanent loss of much-needed labour.

As the apprenticeship scheme progressed, transportation resumed. In the last two years of the apprenticeship period (1837–1839), 21 males were sentenced to transportation

⁷⁶ Hamish Maxwell-Stewart and Clare Anderson, 'Convict Labour and the Western Empires, 1415–1954', in Robert Aldrich and Kirsten McKenzie, eds, *The Routledge History of Western Empires*, Routledge, New York, 2014, p. 111. See also Appendix 4.

⁷⁷ See Appendix 3.

of whom 15 had their status recorded as apprentices.⁷⁸ Appendix 3 shows that the spikes and dips in convict transportation appear to correspond directly with the change in labour systems; the uncertainty regarding the size of the labour pool after 1835, the end to apprenticeship in 1839 and the commencement of the state-sponsored Indian immigration scheme in 1843.⁷⁹ Conversely, in the first year of the apprenticeship scheme, the incidents of corporal punishment, in particular floggings/whippings administered through the office of the stipendiary magistrate, increased dramatically. Even troublesome apprentices, imprisoned for criminal offences, were considered useful labourers. Weir was of the opinion that these apprentices would serve their sentences and then return to the labour pool as reformed characters.

Conclusion

As this chapter has revealed, the apprenticeship system was not a definitive form of emancipation but more an incremental shift from chattel slavery to nominal freedom within the extremely restrictive regulations of the apprenticeship system. This broad social restructuring did little to even out the path to a free, multi-ethnic society.

Maintaining social and economic stability was one of the main objectives of the apprenticeship system in the transition from slavery to freedom, while simultaneously safeguarding access to a steady, cheap source of labour to work the sugar plantations.

⁷⁸ TNA, CO167/189, dispatch no. 35 from Governor William Nicolay to Lord Glenelg, 23 Apr.1836.

⁷⁹ Refer to Appendix 3.

In Mauritius, as in other former British slave societies, apprentices fought against stubborn and durable beliefs of slavery and exploitation.⁸⁰ These persistent prejudices and the ‘elements of compulsion’ inherent in the apprenticeship system, often led to unjust treatments and intimidation of apprentices by former slave owners.⁸¹ In Mauritius, the most visible protest against the system of apprenticeship was through the status offence of marronage. Additionally, apprentices committing crimes while on the run created serious law and order problems for the local authorities, similar to those experienced during slavery. The problem of marronage and other status offences hardened the Mauritian colonial administration’s resolve to keep the apprentice population under control using severe corporal punishments. Most stipendiary magistrates felt nothing but distain for apprentices committing crimes and found it hard to associate many of these crimes with the prevailing socio-economic problems in the colony. Stipendiary Magistrate Anderson wrote to Glenelg in September, 1837,

unless extensive measures are taken to cultivate the minds of the young they will become a wilderness of rank and pernicious weeds whose blighting influence in the general community will be continued, and its beneficial effects felt and regretted long after the special magistrates have been forgotten in the graves.⁸²

Many of the extensive measures carried out by the Mauritian colonial administration justified and included the use of corporal punishments. Additionally, from 1837, apprentices who committed crimes (other than status crimes) were sentenced to transportation. As was the case in the Caribbean, the creation of the institution of

⁸⁰ Teelock, *Mauritian History*, p. 65. During the French Revolution those who were in favour of the abolition of slavery in Mauritius were those Teelock describes as the ‘underclass’. Expressing abolitionist views could see you either asked to leave or forcefully deported.

⁸¹ North-Coombes, ‘From Slavery to Indenture’, p. 82.

⁸² TNA, CO 167/201, letter from Stipendiary Magistrate Anderson to G. F. Dick, 21 Sep. 1837.

apprenticeship led to ‘an extreme version of state formation’.⁸³ In Mauritius, state-authorised punishment of apprentices for status crimes made a mockery of the ‘freedom’ promised through the abolition of slavery.

The moral critique, in particular from the metropole, of the residual realities of slavery inherent in apprenticeship, resulted in the inevitable early demise of this controversial labour system, entrusting apprentices with universal freedom. In the immediate aftermath of the system’s collapse there was a mass exodus from the sugar plantations in Mauritius.

⁸³ Paton, *No Bond but the Law*, p. 54.

CHAPTER 6

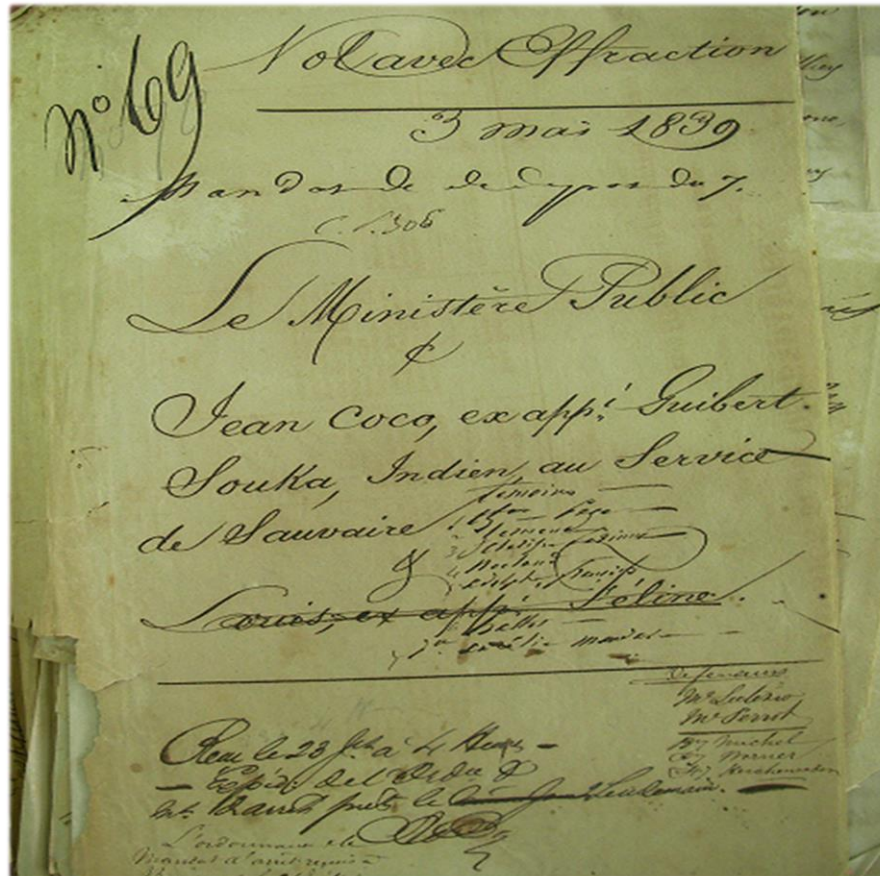
'La Liberté c'est la promenade'¹: post apprenticeship

Figure 10 Trial records of Jean Coco and Paul (Guibert) Souka: NAM, JB 305, Sep. 1839.

L'heure de la liberté a sonné. Maintenant il n'y a plus trace de l'ancien esclavage, il n'y a plus de lien qui attache l'homme à la glèbe ; mais il y a 30,000 vagabonds sur nos routes.²

¹ Translation: 'Freedom is a leisurely stroll'. Press report on emancipation of praedial (fieldwork) apprentices, *Le Cernéen*, 2 Apr. 1839.

² Translation: 'The hour of freedom rang out. Now there is no trace of the old slavery, there is no tie that binds man to the soil; but there are 30,000 vagabonds on our roads'. Translation by the author. *Le Cernéen*, 2 Apr. 1839.

Introduction

The initial date fixed for the official termination of praedial (fieldwork) apprenticeship in Mauritius was 21 March 1839. However, in a governor's dispatch dated 13 March, Sir William Nicolay announced a postponement until 31 March, as the previously set date would coincide with the annual 'Indian festival of "Yampsie" [*sic*]' regulated by the moon in the month of March.³ Normally a 'period of great excitement' in Mauritius, Nicolay hoped that by the end of the month 'the mind of the Indians will have become calm, and they will be a counterpoise in the event of any great excitement being manifested among the apprentices.'⁴

Eighteen-year-old Mauritian Creole Jean Coco would have been one of thousands of apprentices anticipating his freedom.⁵ He was apprenticed to Mr. Gilbert but shortly before March 1839 he had been hired out to work for Thomas Page, a coffee house owner. Things did not go well. Under suspicion of theft Jean Coco ran away. On 27 March, just days before the pronouncement of universal freedom in the colony, while Page was attending the ongoing festivities of the *Yamsé* festival, Jean Coco, who was now on the run, broke into Page's coffee house in *Rue de la Corderie*, Port Louis. He forced open a chest of drawers and escaped with the considerable sum of 680 *piastres* in various currencies. Later the police investigation concluded this was a robbery committed by someone well acquainted with the building. Lavishing his 'newfound wealth' on gifts and goods for personal consumption bought from various merchants

³ TNA, CO 167/209, dispatch from Governor Nicolay to Lord Glenelg, 13 Mar. 1839. This was originally an annual Muslim festival. In Mauritius, over time, this festival developed into an event eagerly anticipated by Muslims and non-Muslims alike. This was Easter Sunday on the Christian calendar.

⁴ TNA, CO 167/209, dispatch from Governor Nicolay to Lord Glenelg, 13 Mar. 1839.

⁵ SRNSW, NRS 1155, 2/8264, Court of Assizes, trial summary of Jean Coco and Paul Souka, 23 Sep. 1839, pp. 277–280.

in Port Louis, Jean Coco and his co-accused, Indian Paul Souka, left a trail of evidence and were soon apprehended. According to witnesses, Souka had allegedly bought a bed, a table and two chairs with his ill-gotten gains.⁶

While the actions of Jean Coco appear opportunistic, the timing of this robbery, with the colony about to bestow universal freedom on all apprentices, may also have been a form of protest—a parting gesture to his former employer. Page, the coffee house owner, must have been wondering if this type of crime was a taste of what was to come. Contemporary observers thought so and predicted a rise in crime by the freed apprentices. Worryingly, the ‘criminality of the freedmen’ was seen as a likely recourse, as most ex-apprentices were unwilling to sign long-term labour contracts with their former masters.⁷

The atmosphere of social tension appears to have sparked a kneejerk reaction in the Court of Assizes in Mauritius, with the courts responding to the paranoia and fear of a potential breakdown in law and order. The increased number of convictions to transportation illustrates the extent to which this form of punishment became an important part of the colonial penal repertoire in Mauritius during the uneasy transition from apprenticeship to universal freedom. In the tumultuous eight-month period between April and December 1839, following the emancipation of the apprentice population, 16 ex-apprentices, two Indians and a woman from the

⁶ NAM, JB 305, trial of Jean Coco and Paul Souka, 23 Sep. 1839. Paul Souka was subsequently acquitted.

⁷ Marina Carter, ‘The Transition from Slave to Indentured Labour in Mauritius’, *Slavery and Abolition* vol. 14, no. 1, 1993, p. 120.

Seychelles were all sentenced to transportation.⁸ Most of the offences involved thefts or robberies with or without violence, except three, two of which related to arson and another to murder. At no other time in the transportation period between 1825 and 1845 did so many convictions result in the sentence to transportation within such a short period.⁹ This was in sharp contrast to the reactions in 1835. In the two years following the abolition of slavery the Court of Assizes sentenced no one to transportation.

The much maligned apprenticeship system, perceived to perpetuate slavery in the former slave colonies of the British Empire, has received much scholarly attention.¹⁰ The focus of this scholarship has centred on the land-labour dichotomy, the transition from slavery to freedom and the relationship between masters, apprentices and eventually ex-apprentices. Less research exists exploring the issues surrounding law and order during and in the aftermath of the apprenticeship period in colonial settings of the empire where this scheme was in operation.

This chapter will interrogate some of the attitudes, reactions and responses to law and order in the aftermath of universal freedom afforded apprentices in Mauritius. In particular, it will examine the correlation between the spike in criminal convictions and sentences to transportation as the apprenticeship system ended in Mauritius. How did the metropole handle public order in Mauritius? How did the ex-apprentices themselves respond to their status as freedmen? What came to define the relationship

⁸ Between 1839 and 1845, 78 convicted felons were transported to the Australian penal colonies of New South Wales and Van Diemen's Land.

⁹ 33 convicts of Indian origin were sentenced to transportation between 1839 and 1845.

¹⁰ Richard Allen, Marina Carter, Eric Foner, Seymour Drescher and Gwyn Campbell have all added to the post-apprenticeship historiography of the Indian Ocean and the Caribbean.

between former master and ex-apprentice? The temporal frame for this chapter covers the period between the abolition of the apprenticeship system in March 1839 and the end to convict transportation from Mauritius to the Australian penal colonies in 1845.

To Sign or not to Sign?

The Mauritian planters, who had previously been assured access to apprenticed labour until 1845, complained bitterly of financial ruin when the much criticised apprenticeship system came to an abrupt end in the sugar colonies of the British Empire in early September 1838. Throughout the empire, apprentices celebrated their long awaited universal emancipation. In Jamaica for instance, ex-apprentices performed ceremonial burnings or burials of whips, chains and collars as well as attending church services to offer thanks for their freedom.¹¹ It took another six months before Mauritian ex-apprentices were able to celebrate their universal freedom by an Order in Council of 5 November 1838, coming into effect on 31 March 1839.¹² The Mauritian ex-apprentice population immediately 'voted with their feet' and deserted the plantations in droves.¹³ Wherever possible, ex-apprentices divorced themselves from the colonial economy to form economically independent, small diasporas on the fringes of the plantations.

In February 1839, the anticipated reluctance of the ex-apprentice population to sign new long-term labour contracts saw the local newspaper, *Le Cernéen*, enter into the

¹¹ Diana Paton, *No Bond but the Law: punishment, race, and gender in Jamaican state formation, 1780–1870*, Duke University Press, Durham, 2004, p. 121.

¹² TNA, CO 167/205, enclosure in Lord Glenelg to William Nicolay, 6 Nov. 1838.

¹³ Megan Vaughan, *Creating the Creole Island: slavery in eighteenth-century Mauritius*, Duke University Press, Durham, 2005, p. 269.

debate about ways to retain ex-apprentices on the plantations.¹⁴ Acknowledging the important role of women on the plantations, the newspaper suggested it was essential to compel women to sign contracts with the inference this would induce male ex-apprentices to stay on the plantations.¹⁵ The effects of slavery on families, through the lack of encouragement by slave owners for their slaves to form meaningful and lasting relationships, had continued during the apprenticeship period.¹⁶ This demonstrates the gendered and intimate dimensions of colonial rule and the need to control not only apprentices but also their family lives and sexual relationships. In Mauritius, after the abolition of apprenticeship in March 1839, almost universally, apprenticed women and their children left the plantations, indicating their desperate need to sever ties with plantation life and its associated oppressive working conditions, even if this meant living in squalor.¹⁷

Bridget Brereton has argued that in the British Caribbean the number of apprentices abandoning plantations varied from colony to colony according to geography, available land, customary rights, allowances and established market economies.¹⁸ In many of the former Caribbean slave colonies, women continued to work on plantations. Others chose to escape the abusive environment of plantation life to avoid sexual abuse and other forms of exploitation. On his visit to Mauritius in 1838 James

¹⁴ *Le Cernéen*, established by Adrien D'Epinay, is among the oldest French-language newspapers in the world, with uninterrupted publication since 1832. As in many colonial theatres throughout the empire, the Mauritian press waged many of the island's political and social battles and campaigns through its newspaper publications. Lindsay Rivière, *Historical Dictionary of Mauritius: African Historical Dictionaries*, no. 34, Scarecrow Press, London, 1982, p. 102.

¹⁵ *Le Cernéen*, 28 Feb. 1839.

¹⁶ Vijayalakshmi Teelock, *Mauritian History: from its beginnings to modern times*, Mahatma Gandhi Institute, Moka, 2009, p. 218.

¹⁷ Around 13,000 women deserted the plantation after March 1839. Teelock, *Mauritian History*, p. 220.

¹⁸ Bridget Brereton, 'Family Strategies, Gender, and the Shift to Wage Labour in the British Caribbean', in Pamela Scully and Diana Paton, eds, *Gender and Slave Emancipation in the Atlantic World*, Duke University Press, London, 2005, pp. 144–146.

Backhouse, a Quaker missionary, commented on the retreat of women from the plantations. He observed that 'women, instead of going to the field to labour as formerly, chose to stay at home to take care of their huts and families.'¹⁹ Away from the plantations, women were free to devote more time to domestic duties and child rearing, ensuring the survival and more importantly, the autonomy of the family and the kinship group. In all the former slave colonies there was also a reluctance to send children of ex-apprentices onto the plantations to work as they feared they may be 'trapped' and exploited.²⁰ Nevertheless, the Mauritian colonial administration was confident in its ability to persuade ex-apprentices to sign labour contracts.

In May 1839, Stipendiary Magistrate Thatcher wrote to the colonial secretary on the matter of the labour contracts. Thatcher boasted that in the first month of universal emancipation he had finalised 1,300 new labour contracts with no objections. After the first month of success, however, a general unwillingness to sign these labour contracts had become apparent. Thatcher lamented that 'such is the objection or superstition of those people, that the idea of touching the pen terrifies them beyond belief', convinced that 'it is a trap.' Thatcher blamed some 'evil disposed persons' for giving the ex-apprentices bad advice.²¹ One contemporary observer was probably closer to the truth when he wrote in 1840 that the emotions attached to the word "'slavery'" is intimately

¹⁹ James Backhouse, *A narrative of a visit to the Mauritius and South Africa*, Hamilton Adams & Co., London, 1844, p. 21. See also James Backhouse, Australian Dictionary of Biography, <http://trove.nal.gov.au/version/51181379>.

²⁰ In the West Indies during slavery and apprenticeship, women had played a central role in the plantation economy. The division of labour, with men transferred to artisan and non-field labour, saw women take up more of the fieldwork. Brereton, 'Family Strategies, Gender, and the Shift to Wage Labour in the British Caribbean', pp. 145–146.

²¹ TNA, CO/RC 27, F. Thatcher to Colonial Secretary, 9 May 1839, in Marina Carter and Raymond D'Unienville, *Unshackling Slaves: liberation and adaptation of ex-apprentices*, British Mauritius collected documents, Pink Pigeon Books, London, 2001, pp. 71–72.

blended with the culture of the soil and the use of the degrading “pioche” (hoe).²²

Richard Allen points out that it was frequently noted that a return to the ‘pioche’ and plantation life would prevent ex-apprentices from acting as free men and women.²³ In Mauritius, denying ex-apprentices, wherever possible, the opportunity to purchase land was another ploy designed to keep them labouring on the plantations.

The unwillingness of emancipated apprentices to work for their former masters was not unexpected. According to Megan Vaughan, another reason why attempts to coerce ex-apprentices back to the plantations did not succeed was metropolitan ‘abolitionist scrutiny’.²⁴ Allen argues that London persistently refused to sanction the introduction of harsher vagrancy legislation in order to compel ex-apprentices back to the plantations.²⁵ Plantation labour, as Seymour Drescher suggests, had become ‘degraded’ in an environment tainted by slavery.²⁶

Equally, in an economic environment where profits hinged on a single commodity, the perceived unreliability of apprentices saw many planters refuse to re-sign contracts.

Marina Carter has challenged the established view that most apprentices quit the plantations. Carter argues that many former slaveholders railed against the erosion of their coercive powers and refused to sign contracts with their former apprentices.

From a potential labour pool of 30,000 only between 4,000 and 5,000 freed apprentices signed long-term labour contracts to continue to work in the sugar cane

²² TNA, CO 167/226, letter from Captain Lloyd to Mr. Irving, 4 Apr. 1840, enclosure in Irving & Barclay to Lord Russell, 10 Jul. 1840.

²³ Richard Allen, *Slaves, Freedmen and Indentured Laborers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, p. 112.

²⁴ Vaughan, *Creating the Creole Island*, p. 269.

²⁵ Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*, p. 109.

²⁶ Seymour Drescher, ‘Abolitionist Expectations: Britain’, in Howard Temperley, ed., *After Slavery: emancipation and its discontent*, Frank Cass Publisher, Portland, 2000, p. 41-46.

fields after March 1839.²⁷ The reluctance of both parties to sign these contracts seems likely to be the real reason for this relatively low figure. In 1841, two years after the abolition of the apprenticeship system in Mauritius the British Under-Secretary of State for the Colonies, James Stephen, alluded to the binary between freedom and labour in a colonial setting. He stated: '[i]n England the poor are dependent on the rich. But in the colonies, where the rich are dependent on the poor there is great need of jealousy in defining the obligations to labour and the penalties for idleness.'²⁸

After March 1839 it would also seem reasonable to assume that ex-apprentices, when given their universal freedom, would move as far away from their former owner/employer as possible and many did. Others chose to stay close to their former masters' properties for social and economic reasons.²⁹ Social interaction and co-operation, both from fellow freedmen and the substantial free population of colour (*gens de couleur*) in Mauritius, was manifest within the marginalised communities on the fringes of the sugar plantations. Family liaisons and a *mélange* of religious and cultural practices influenced by African, Asian and European patterns of behaviour became the glue that held these fringe communities together.³⁰ In the struggling fledgling communities food and shelter were in short supply, inevitably resulting in actions of a criminal nature.

²⁷ By the middle of the 1840s most of the 4,000–5,000 ex-apprentices who had signed labour contracts had also withdrawn from plantation labour. Allen, *Slaves, Freedmen and Indentured Laborers in Colonial Mauritius*, p. 120.

²⁸ TNA, CO 167/231, minutes from James Stephen to Mr. Hope, 5 Oct. 1841.

²⁹ Allen, *Slaves, Freedmen and Indentured Laborers in Colonial Mauritius*, pp. 118–119.

³⁰ Stanley L. Engerman, 'The Economic Response to Emancipation and Some Economic Aspects of the Meaning of Freedom', in Frank McGlynn and Seymour Drescher, eds, *The Meaning of Freedom: economics, politics, and culture after slavery*, University of Pittsburgh Press, Pittsburgh, 1992, pp. 51–52.

'Allowed to waste their freedom'³¹

The termination of the apprenticeship system and the subsequent mass exodus from the plantations had significant implications for law and order in Mauritius. In a dispatch on 2 April 1839, Governor William Nicolay played down the threat to the colony by reassuring London that this general exodus from the plantations had been orderly. The end to apprenticeship had given ex-apprentices an opportunity to make 'engagements as free people with those who have not ruled them as slaves.'³² He implied that the novelty would soon wear off and they would return to work on the plantations. The governor was at pains to point out that the abolition of apprenticeship had taken place at a time when the loss of labour on the sugar plantations would be minimal and not detrimental to the Mauritian economy.³³

A month later, in a follow-up dispatch to London, Nicolay was less optimistic about the return of ex-apprentices to the sugar estates, acknowledging that certain districts were almost completely deserted. He painted a grim picture of abandoned sugar estates and ex-apprentices establishing themselves on the fringes of these estates. This also had some 'expected' consequences and the governor conceded there was a 'visible increase in certain crimes, such as theft-pillage and devastation of property, to the serious injury of individuals, and as these depredations are, for the most part, committed by night, it is extremely difficult to detect the offenders.'³⁴

³¹ Patrick Barnwell and Auguste Toussaint, *A Short History of Mauritius*, Longmans, Green and Co, London, 1949, p. 153.

³² TNA, CO 167/210, dispatch no. 42 from Governor William Nicolay to Lord Glenelg, 2 Apr. 1839.

³³ TNA, CO 167/210, dispatch no. 42 from Governor William Nicolay to Lord Glenelg, 2 Apr. 1839.

³⁴ This dispatch included a petition dated 18 May 1839, from a group of Mauritian planters urging the government to reinstate Indian labour immigration, TNA, CO 167/210; dispatch no. 57 from Governor William Nicolay to Lord Glenelg, 4 May 1839.

Around the same time, the Civil Commissary of Savanne (a district of Mauritius) received a letter from a Mr. Montaulard complaining about the damage done to one of his labour camps.³⁵ He described the forest adjacent to his plantation as teeming with ex-apprentices refusing to accept employment on the properties where they had previously lived and worked. Montaulard claimed a group of his former apprentices had severely damaged one of his camps when they 'pilfered all the windows and doors of the huts and the poultry that was there.'³⁶ According to Montaulard, the next night they had returned and demolished another big hut in the camp and taken all the timber they could carry. As a parting gesture they had set fire to what they could not take with them. Montaulard wanted the authorities to survey the damage to his property as he feared their return. In the immediate aftermath of emancipation most ex-apprentices lived a highly vulnerable and impoverished existence. With little food and limited shelter, theft of garden produce and poultry as well as building materials was a risk worth taking and often the only way for many of these newly formed communities to support themselves.

The civil commissary forwarded Montaulard's letter to Nicolay who assured the planter that 'every exertion' would be made to apprehend the perpetrators.³⁷ His assuredness may have had something to do with his plan to substantially increase the local police force. On 25 March 1839, with the termination of apprenticeship imminent, the governor, who feared large scale disturbances, in a dispatch to Lord

³⁵ NAM, RA 584, report from Police Commissioner John Finnis to the Colonial Secretary, including a letter of complaint from Mr. Montaulard, 23 Apr. 1839. Letter translated from French to English by the author.

³⁶ NAM, RA 584, letter of complaint from Mr. Montaulard to the civil commissioner of Savanne, 23 Apr. 1839.

³⁷ NAM, RA 584, report by John Finnis to Governor Nicolay 29 Apr. 1839.

Glenelg communicated his plans to swell the number of police in the colony.³⁸

Nicolay further suggested that cooperation between proprietors, other interested parties and the public authorities, including police stationed in the area for a limited period, would protect the neighbourhoods and maybe lead to the arrest of offenders.³⁹

Carter suggests that Montaulard and other planters' assertion of criminal behaviour was converted into 'ideological weapons' to discredit ex-apprentices.⁴⁰

Ex-apprentices appearing in the Court of Assizes in Mauritius in the immediate aftermath of emancipation, mostly on charges of crimes against property, certainly felt the full force of the law. In this period those who stepped outside the boundaries of colonial society and committed crimes of a serious nature could expect removal from the colony as part of their punishment. The local jurisdiction's fight against the sharp rise in crime led to harsher penalties evidenced by the more frequent sentencing to transportation in the first 12 months after the termination of the apprenticeship system.

'Colouring the Rainbow'⁴¹: ex-apprentices and other plantation workers

Trial records are inconsistent when it comes to recording offenders' status as ex-apprentice or ex-government apprentice (a slave who had been part of the illegal slave trade, captured and become government 'property'). However, the listing of first name/s only, followed by native place such as Mozambique and Madagascar or the description as Creole point to former slave/apprentice status. Court documents often

³⁸ TNA, CO 167/209, dispatch no. 40 from Governor Nicolay to Lord Glenelg, 25 Mar. 1839.

³⁹ NAM, RA 584, reply to Mr. Montaulard from Governor Nicolay of Mauritius, May 1839.

⁴⁰ Carter, 'The Transition from Slave to Indentured Labour in Mauritius', p. 118.

⁴¹ Marina Carter, *Colouring the Rainbow: Mauritian society in the making*, Centre for Research on Indian Ocean Societies, Port Louis, 1998.

record the type of work performed by ex-apprentices, such as domestic service, baker, cook, shoemaker, wigmaker, barber, stable hand, seamstress, painter or fisherman, indicative of the many skills employed in the cottage economies that flourished both during and after the abolition of apprenticeship. These industries started to both compete with, and disrupt the traditional labour processes in the colony.⁴² The many and varied skills of these ex-apprentices meant that they were employed in a range of trades and encountered a range of different people.

The trial records have revealed that few of the convicts' victims or 'targets' were total strangers. Frequently, ex-apprentice offenders had a direct or indirect personal connection to their victim/s. Of those in domestic employment or working in close proximity to their owner's business premises, the temptation to steal goods for their own consumption or to on-sell for profit could be irresistible. Using skeleton keys (copied keys), some ex-apprentices took the opportunity when their employer was absent to enter his home, business or office premises. This was the case less than two months after the termination of the apprenticeship system when, on 29 May 1839, ex-apprentice Victor, working for Charles Brun, a shopkeeper in Port Louis, in concert with another ex-apprentice, Eugène, in the service of Mr. Duval, had managed to obtain a skeleton key.⁴³ They were about to enter the shop when they were interrupted by the unexpected return of the shopkeeper. He promptly handed them over to the police. In July 1839, Pierre Richard also used a skeleton key to enter the house of Mr.

⁴² Initially planters were reluctant to sell *petit* and *grand morcellement* (small and larger plots of land) to ex-apprentices to encourage them to return to the plantations. However, the planters soon realised that the cash generated in these communities was an extra source of income and selling both *petit* and *grand morcellements* to ex-apprentices became more common. For a more in-depth analysis on these land sales, see Chapter 5 in Allen, *Slaves, Freedmen and Indentured Laborers in Colonial Mauritius*, pp. 105–135.

⁴³ SRNSW, NRS 1155, 2/8266, Court of Assizes, trial summary of Victor and Eugène, 23 Sep. 1839, pp. 289–292.

Maroussen, his employer. He was more successful than Victor and Eugène and managed to escape with 260 *piastres* in sovereigns and bank notes and some silver and gold jewellery.⁴⁴ All three were found guilty and sentenced to transportation for seven years.

As previously mentioned, not only cash and jewellery were of value to ex-apprentices and their accomplices. Building material was also in short supply. On 25 May 1839, Etienne and Pierre Louis, employed to guard the shipyard of Mr. Petizeau, stole 10 boards from their employer's yard. L'Esperance, a fellow ex-apprentice, was charged with complicity to the theft, probably acting as a lookout. Laurent Maingard, a free Mauritian Creole, was charged with receiving stolen goods.⁴⁵ They were all sentenced to transportation for seven years. Property theft, complicity to theft, receiving stolen goods and robbery (with or without violence) were among the most frequently recorded crimes by ex-apprentices and their accomplices in this period.

Some plantations experienced more disturbances and violence than others post apprenticeship. The sugar estate L'Union at Grand Baie, owned by Widow Daruty, had its fair share of riotous behaviour, thefts and assaults. The trial records do not allude to the living conditions on the estate but they were sure to be cramped and lacking in comfort. By 1845, three labourers from this estate had been transported to

⁴⁴ SRNSW, NRS 1155, 2/8282, Court of Assizes, trial summary of Pierre Richard, 11 Dec.1839, pp. 55–58

⁴⁵ SRNSW, NRS1155, 2/8266, Court of Assizes, trial summary of Etienne, Pierre Louis, L'Esperance, Laurent Maingard, 23 Sep. 1839, pp. 281–287.

Australia and others had been sentenced to jail terms in Port Louis.⁴⁶ L'Union is also interesting from the point of view of who was working on this estate. The various people who were eventually sentenced to transportation show the multi-ethnic mix of labourers on the estate, encapsulating the entire labour history of Mauritius.

On 31 March 1839, the very day of the official termination of the apprenticeship in Mauritius, Jean Martial, apprenticed to Mr. Gauthier, and three apprentices from the L'Union estate, Jean Louis, Grand Ally and Petit Ally, were all present in the Court of Assizes, accused of violent armed robbery.⁴⁷ They had entered the property of Mr. Marchand at Grand Baie, assaulted one of his labourers and robbed him of his 10 chickens. A recidivist, Jean Martial was transported to Van Diemen's Land for seven years. Petit Ally was acquitted and the other two served jail time in Port Louis.

A couple of years later, in early October 1841, a mood of general disgruntlement had been developing among the Chinese labourers on L'Union, culminating in a refusal to work and a frenzied assassination attempt on the property's Chief Overseer Grégoire Chenaux.⁴⁸ On the morning of 9 October, 1841 Kobing, one of the Chinese labourers, pointed an empty bottle menacingly at Overseer Henry Bois shouting; 'Come captain, come Captain' – the Chinese wanted to speak to Chenaux. James Krumpholtz, another overseer, then arrived to mediate in the standoff. Kobing broke the empty bottle of Gin and threw it at the face of Krumpholtz. It missed. Fearing Kobing's arrest, 15 Chinese

⁴⁶ NAM, JB, 338, trial of Chéri Augustin and Jean Louis Miguel, 3 Jun. 1844; SRNSW, NRS 1155, 2/8266, Court of Assizes, trial summary of Jean Martial, Petit Ally, Grand Ally, Jean Louis, 1 Jul. 1839, pp. 321–324.

⁴⁷ SRNSW, NRS 1155, 2/8266, Court of Assizes, trial summary of Jean Martial, Petit Ally, Grand Ally, Jean Louis, 1 Jul. 1839, pp. 321–324.

⁴⁸ NAM, JB 320, trial of Wetia Hong, 17 Oct. 1841.

workers advanced on Krumpholtz. Some of the ex-apprentices on the estate helped him to flee.

Informed of the disturbance, Chenaux immediately went to the living quarters of the Chinese armed with a baton. Inside he found the Chinese labourers all lying on their camp beds in defiant dissent. Chenaux took one of the labourers by the arm and led him out of the hut. As he was about to take 38-year-old Wetia Hong's arm and lead him outside Hong turned around and tried to plunge a large knife through Chenaux's heart. It missed. Realising that the knife had missed the heart, Hong then used the knife like a sword and a blow struck Chenaux on the left side of his head. He was seriously injured. Wetia Hong was eventually overpowered. During the assault on Chenaux the Chinese labourers had barricaded the door of the hut, throwing bottles, plates and bowls at anyone who tried to enter.⁴⁹

When the case went to trial in the Court of Assizes on 11 November, 1841, it was argued that the Chinese labourers' actions had been provocative and premeditated. The aim had been to assassinate Chenaux. According to Wetia Hong's statement there were several reasons for the assaults on the overseers. Hong accused Chenaux on a previous occasion to 'have knocked him out' when he 'arrived in the hut with some blacks armed with sticks.' Hong later changed his statement, saying that the Chinese had not yet had breakfast and therefore refused to work. According to Hong, the knife used in the attack on Chenaux had been in the hands of another Chinese labourer, who was peeling cucumbers, when Chenaux snatched it from him. When Hong tried to

⁴⁹ NAM, JB 320, trial of Wetia Hong, 17 Oct. 1841.

seize the knife, fearing the overseer would stab him, a scuffle ensued. He then lost consciousness when someone hit him over the head with a stick. The Court found Wetia Hong guilty and sentenced him to transportation for life.

In 1840, a year prior the Chinese riot, records show that there were also 162 Indian workers employed on the estate.⁵⁰ By the end of the year, the estate had recorded 15 Indian deaths, 14 hospitalisations and 18 as having deserted the property, indicative of the harsh and tumultuous environment on this Mauritian plantation.⁵¹ Thousands of indentured Indian labourers were already working in Mauritius and thousands more would arrive to take over the backbreaking work previously undertaken by slaves and apprentices on the Mauritian sugar estates.

From time to time the Indians working on L'Union also enjoyed social gatherings and religious celebrations and festivals. Invariably, fighting would also break out at these gatherings as people would take the opportunity to 'settle old scores', either by violence or other means.⁵² An example of this took place in March 1844, when a large number of Indian workers were celebrating the religious festival of *Yamsé*. While the festivities were under way, two young ex-apprentices took the opportunity to enter one of the Indian overseer's hut. Moments later, Jean Louis Miguel and Chéri Augustin were seen traversing the labour camp at speed. Miguel was carrying a chest on his

⁵⁰ The only number of Chinese workers mentioned as living on the estate relates to the 15 who attacked the overseer Krumpholtz.

⁵¹ TNA, PP. no 58, 28 May 1840, copies of correspondence addressed to the secretary of state for the colonial department relative to the introduction of Indian labourers into the Mauritius.

⁵² Clare Anderson, *Convicts in the Indian Ocean: transportation from South Asia to Mauritius, 1815–53*, MacMillan Press Ltd, Houndsmills, 2000, p. 92.

head, with Augustin following closely behind.⁵³ The next morning the chest was recovered in one of the cane field. It still contained the overseer's linen and a small but now empty box, which had contained the Indian's savings. It is highly likely that there may have been some sort of dispute between the men, and these two ex-apprentices saw an opportunity to seek revenge. After their arrest, Chéri Augustin blamed the other ex-apprentice for now being 'in the hands of the Law'. Miguel responded by encouraging him to 'bear his pain with courage.'⁵⁴ In June 1844, the Court of Assizes found the two ex-apprentices guilty. They were sentenced to transportation for seven years. L'Union sugar estate thus offers a snapshot of the ethnic mix of labourers on the sugar plantations in the early post-emancipation years and highlights the volatile environment within some of these camps.

Lacking 'moral restraints'⁵⁵

Historians have argued that the transition from slave to wage labour was far more peaceful in Mauritius than in some of the other slave colonies in the empire.⁵⁶ Yet, while the expected riotous behaviour did not occur in the immediate aftermath of the abolition of the apprenticeship system, the ongoing issues of criminal behaviour among marginalised ex-apprentices continued to cause fear and consternation in the colony for years to come. Ex-apprentices with no means of supporting themselves indeed turned to crime in increasing numbers.

⁵³ NAM, JB 338, trial of Chéri Augustin and Jean Louis Miguel, 3 Jun. 1844

⁵⁴ NAM, JB 338, trial of Chéri Augustin and Jean Louis Miguel, 3 Jun. 1844.

⁵⁵ TNA, CO 167/221, dispatch no. 8 from Governor James Power to Colonial Secretary Lord Russell, 31 Mar. 1840.

⁵⁶ For instance, Richard Allen's claim that the 'much feared collapse of public order did not materialize' may on the surface appear to have been the case. Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*, p. 106.

Acting governor of Mauritius, James Power, wrote in a dispatch on 31 March 1840, a year after the universal emancipation of all apprentices, that it was 'with horror' that he presented *The Annual Report of the Procureur and Advocate General upon the Proceedings of the Courts of Criminal Justice for the last Year*.⁵⁷ The report described an alarming increase in offences which was 'painfully great'.⁵⁸ This 'pain' was, however, reduced by the 'satisfaction to perceive that there are few [crimes] of an atrocious nature, and none of a description to compromise the public tranquillity.' The acting governor expressed considerable relief that no major riots had occurred after March 1839.

Acting Governor Power attributed the sharp increase in crime to ex-apprentices not being 'sufficiently accustomed to those moral restraints which will be engendered by a life of liberty, but which were comparatively unknown in a state of Bondage.'⁵⁹ He believed the 'evil' had arisen from 'a sudden change in the condition of an uninstructed population'.⁶⁰ General prosecutor, Prosper D'Epinay, in his report on crimes committed in the colony, stated that '*les ex-apprentis figurent en plus grand nombre parmi les condamnés, surtout pour les attentats contres la propriété*' (the ex-apprentices appear in greater numbers among the convicts, especially the attacks on property). D'Epinay was encouraged by the fact there were fewer violent attacks on people. He believed this demonstrated 'a degree of natural morality that with

⁵⁷ TNA, CO 167/221, dispatch no. 8 from Governor James Power to Colonial Secretary Lord Russell, 31 Mar. 1840.

⁵⁸ TNA, CO 167/221, dispatch no. 8, 31 Mar. 1840.

⁵⁹ TNA, CO 167/221, dispatch no. 8, 31 Mar. 1840.

⁶⁰ TNA, CO 167/221, dispatch no. 8, 31 Mar. 1840.

education and civilisation they [the ex-apprentices] are bound to develop and benefit from.'⁶¹

One of the local newspapers did not share the views of public tranquillity. *Le Cernéen* had reported on 2 April 1839, only days after the abolition of the apprenticeship system, that the apprentices were no longer 'tied to the pioche' and consequently there were '30,000 vagabonds on our roads.'⁶² The newspaper dedicated part of its report to the dire conditions in the colony in the immediate aftermath of the termination of the apprenticeship system. The general exodus from the plantations is 'frightening', wrote the paper.⁶³ *Le Cernéen* pleaded with the British metropolitan government: '*Nous demanderons donc au nom du juste, au nom de l'humanité, que la métropole, fidèle à ses théories philanthropique, accorde à notre colonie un subside ... pour secourir et recueillir le pauvre noir souffrant, pour élever chrétiennement ses enfants.*'⁶⁴ As the British public purse in 1835 had compensated the colony for the loss of its slaves to the tune of £2 million, the plea for further subsidy was unlikely to succeed.

Immediately following the abolition of the apprenticeship system a vast number of ex-apprentices had gravitated towards the main town of Port Louis. However, ex-apprentices also settled in the less-cultivated areas of the island where land was cheaper or where it was less problematic to set up squatters' camps on crown land and

⁶¹ TNA, CO 167/221, report by General Prosecutor Prosper D'Epinay, attached to the report from Governor Power to Colonial Secretary Lord Russell, 31 Mar. 1840. Translated by the author.

⁶² *Le Cernéen*, press report on emancipation of praedial apprentices, 2 Apr. 1839. By the middle of 1840 most of the 4,000–5,000 ex-apprentices who had signed labour contracts had also withdrawn from plantation labour. Allen, *Slaves, Freedmen and Indentured Laborers in Colonial Mauritius*, p. 120.

⁶³ *Le Cernéen*, press report on emancipation of praedial apprentices, 2 Apr. 1839.

⁶⁴ Translation: We therefore ask in the name of righteousness, in the name of humanity that the metropole, faithful to its philanthropic theories, to grant our colony a subsidy ... to help and rescue the poor suffering blacks to be able to raise their children as Christians. Translated by the author.

work as subsistence farmers.⁶⁵ Others went to the coast and made a living by fishing. However, the complaints continued about ex-apprentices 'not disposed to enter into any fixed employ', but content to cut grass and gather firewood on crown land and on private property in the vicinity of Port Louis.⁶⁶ Residents frequently reported the theft of 'produce from their gardens, poultry, firewood and grass'.⁶⁷

The uneasiness and anxiety expressed by the elite population of Port Louis and planters like Montaulard is understandable when considering the demographic composition in the colony. In the 1846 census, those of European origin constituted only two percent of the entire Mauritian population.⁶⁸ In light of this figure, it is understandable that Acting Governor Powell was eager to allay the fears of this section of the colonial population as well as the Colonial Office. He optimistically suggested the increased crime rate was an aberration which would decline once the ex-apprentices had become 'civilised' enough to handle their newfound freedom. The Colonial Office in London did not share his optimism.

In London, the response to the reports on crime in the colony by the acting governor and the *procureur general* was one of consternation. The very 'formidable' increase in crime in Mauritius that coincided with the abolition of the apprenticeship system was in sharp contrast to that experienced in the West Indian colonies. According to Lord John Russell at the Colonial Office in London, in the West Indies, the post-

⁶⁵ NLA, MAUR 1300, census report 1846/1851, pp. 4–5.

⁶⁶ TNA, CO 167/221, letter from Vernon Smith to Lord John Russell, 5 Aug. 1840.

⁶⁷ NLA, MAUR 1300, census report 1846/1851, pp. 4–5.

⁶⁸ NLA, MAUR 1300, census report 1846/1851, pp. 4 and 5. In 1846, the British outnumbered the French colonists, with fewer French-born subjects settling in the colony than British-born subjects. Ex-apprentices born outside Mauritius in places such as Madagascar, Mozambique and other African countries had also dropped, mostly because of the end to the slave trade.

apprenticeship period showed a decline in criminal activity and a 'diminution of the business of the Criminal Courts'.⁶⁹ By making this unfavourable comparison with the West Indian colonies, Russell pointed the finger at the Mauritian colonial administration, the judiciary as well as the planters for the increased criminal behaviour among the ex-apprentice population.

There were several reasons for this variance in crime and criminal activities between the West Indies and Mauritius, mostly relating to wage negotiations, geography and immigration. Seymour Drescher points to the widespread 'voluntary withdrawal' from the plantations in the West Indies which was in sharp contrast to the 'mass expulsion' of apprentices from the Mauritian sugar plantations.⁷⁰ One of the main causes for these evictions was the general refusal of ex-apprentices in Mauritius to accept 'collective wage fixing', labour contracts and restrictive working conditions. Consequently, former masters chased their ex-apprentices off the plantations.⁷¹ Others left in protest.

In Mauritius, however, labour and economic market forces were soon to override the language of slavery. Mauritian planters, eager to erase the memory of slavery and apprenticeship, showed a clear preference for indentured labourers who accepted five-year, fixed-wage labour contracts. In contrast to post-apprentice British Caribbean, Mauritian planters' private immigration strategies had already resulted in the introduction of a substantial external Indian male labour force (numbering around

⁶⁹ TNA, CO 167/221, letter from Lord John Russell to Governor Lionel Smith, 25 Aug. 1840.

⁷⁰ Seymour Drescher, *The Mighty Experiment: free labor versus slavery in British emancipation*, Oxford University Press, Oxford, 2002, p. 155.

⁷¹ Drescher, *The Mighty Experiment*, p. 159; Planters were willing to keep young productive labourers on the plantations under conditions set by the planters. According to Carter, it was those no longer considered 'able-bodied' who suffered the most, experiencing malnutrition and living in squalor. Carter, 'The Transition from Slave to Indenture labour in Mauritius', p. 121.

20,000) by March 1839.⁷² West Indian ex-apprentices did not initially have to compete in the labour market with imported Indian indentured labourers.

As in the West Indies, the Mauritian colonial administration had the authority to compel ex-apprentices back onto the sugar plantations, although in the Caribbean wage and contractual negotiations were more carefully considered in order to retain a viable labour force.⁷³ Mauritian planters were less enthusiastic in their endeavours to coax ex-apprentices back onto the sugar plantations. They had an alternative labour pool of indentured Indian workers. Lax, unregulated labour laws also meant Indian indentured labourers worked long hours, increasing planter profits. Indians in Mauritius, at least initially, were considered a more malleable and compliant workforce. The stereotyping of ex-apprentices as lazy and unwilling workers, who were only prepared to work when on the point of starvation, continued. As Carter explains, the crucial role of indentured labour was the assurance of 'planter control of the entire labour process' as well as acting as a labour 'insurance policy', following the universal freedom of apprentices.⁷⁴ Carter further asserts that the geographical location of Mauritius was another major 'factor governing the power relations between master and former slave'.⁷⁵ In Mauritius, immigration created unemployment, poverty and a large vagrant population devastating the Mauritian ex-apprentice population.⁷⁶ These factors disadvantaged many ex-apprentices, who, with little or no form of subsistence, saw theft and other crimes as their only recourse.

⁷² Drescher, *The Mighty Experiment*, p. 154.

⁷³ Carter, 'The Transition from Slave to Indenture labour in Mauritius', p. 115.

⁷⁴ Carter, 'The Transition from Slave to Indenture labour in Mauritius', p. 116.

⁷⁵ Carter, 'The Transition from Slave to Indenture labour in Mauritius', p. 115.

⁷⁶ Drescher, *The Mighty Experiment*, p. 208.

Pro-abolitionist James Stephen at the Colonial Office in London also entered into the debate. His suggestion as to why this 'same experiment' had produced such a different outcome in Mauritius 'may perhaps be found in the less advanced condition or in the less judicious treatment of the emancipated class'.⁷⁷ By pointing to neglect and mistreatment of Mauritian ex-apprentices, both Russell and Stephen harked back to the Franco-Mauritian planters' hard-line defence of slavery and the British view of the French legal system as harsh and outdated. As was the case during slavery, it seems that Mauritius again had come to the attention of the metropolitan authorities due the excessive use of punishments, first against apprentices and now ex-apprentices.

Stephen, referring to the Mauritian legal system, blamed the increase in criminal convictions on 'some defect or error in the laws by which they were more immediately affected.' This criticism of the French legal system and the courts in Mauritius implied a continued heavy-handed approach in sentencing of the ex-apprenticed population, not just ex-apprentices' lack of 'moral restraints', as suggested by Acting Governor Powell.⁷⁸ There was an inference that the Mauritian courts had to readjust to the concept of universal freedom. Self-possession and autonomy were ideological constructs which had not previously applied to the slave or apprentice population in the Mauritian courts. The message from the Colonial Office in London to the Mauritian colonial administration was clear. 'Whatever may be the cause it will deserve the Governor's most careful attention, with a view to devise a proper remedy for so great an evil', wrote Stephen.⁷⁹ In response to this criticism one of the remedies used to combat this great 'evil' was the increased frequency of sentences to

⁷⁷ TNA, CO 167/221, minutes by James Stephen, Colonial Office, London, 3 Aug. 1840.

⁷⁸ TNA, CO 167/221, dispatch no. 8 from Governor James Power to Colonial Secretary Lord Russell, 31 Mar. 1840.

⁷⁹ TNA, CO 167/221, minutes by James Stephen, Colonial Office, London, 3 Aug. 1840.

transportation by the Mauritian judiciary. This form of punishment was clearly meant to send a strong message of permanent removal, with devastating consequences, for those perceived to pose the biggest threat to law and order. Whether transported from a British port or from one of the many colonial ports around the Empire, this forcible removal was 'a type of death' with family and community ties often permanently severed.⁸⁰

The untenable situation in Port Louis in the aftermath of the termination of apprenticeship led Police Commissioner John Finniss, in April 1839, to put forward a possible solution to crime and overcrowding in Port Louis. He wanted to enforce 'the laws upon vagabondage'.⁸¹ Under Ordinance 16 of 1835, a vagrant was someone without employment, no permanent residence and no means of supporting him/herself. According to this vagrancy legislation, ex-apprentices could be placed in public work gangs, made to work on plantations or in other types of employment for failing to procure work within a set timeframe.⁸² By enforcing this law, Finniss believed it was possible to persuade ex-apprentices to move out of the urban areas and seek employment on the plantations. He instructed police officers to search the streets of the town and pick up 'such characters ... considered fit subjects to be treated as vagabonds.'⁸³ A small number of ex-apprentices were picked up and handed over to

⁸⁰ Emma Christopher, *A Merciless Place: the lost story of Britain's convict disaster in Africa and how it led to the settlement of Australia*, Allan & Unwin, Crows Nest, NSW, 2010, p. 31.

⁸¹ NAM, RA, 584, report from Commissioner of Police John Finniss, to the colonial secretary, 17 Apr. 1839.

⁸² Moses Nwulia, *The History of Slavery in Mauritius and the Seychelles 1810–1875*, Associated University Presses, London, 1981, pp. 151–152.

⁸³ NAM, RA, 584, report from Commissioner of Police John Finniss, to the colonial secretary, 17 Apr. 1839.

the stipendiary magistrate for the district of Port Louis. Finniss felt this strategy would save the community from the 'most serious consequences'.⁸⁴

As discussed in the previous chapter (Chapter Five) of this thesis, marronage, which had been a serious problem in Mauritius during slavery, had continued to frustrate the colonial authorities during the apprenticeship period. In the aftermath of the abolition of the apprenticeship system, vagrancy legislation became a common vehicle to control the movement of ex-apprentices.⁸⁵ Amongst the strategies were strict curfews to try and curtail the increasing homeless and unemployed ex-apprentice population from criminal activities at night. From the early 1840s, with the rapid increase in the Indian workforce and with the social pressures increasing, harsh vagrancy laws also became part of the strategy to maintain law and order.

Conclusion

Universal emancipation became one of the historical flashpoints which contributed to shaping the modern world. In Mauritius, the often-problematic interpretations of the actions of the main actors in this event depended largely on your point of view and not least your social standing in contemporary Mauritian society. Following the abolition of the apprenticeship system new and complex hierarchies and social structures within Mauritian society emerged. Mauritian historians Auguste Toussaint and James Barnwell in their book, *A Short History of Mauritius*, published for the Mauritian government in 1949, briefly discuss the plight of ex-apprentices in Mauritius. The two

⁸⁴ NAM, RA, 584, report from Commissioner of Police John Finniss, to the colonial secretary, 17 Apr. 1839.

⁸⁵ Rivière, *Historical Dictionary of Mauritius*, pp. 58–59.

historians rightly point out that most ex-apprentices were left to their own devices, neglected by both the colonial government and the established elite in post-emancipation Mauritius. Toussaint and Barnwell assert that ex-apprentices by all accounts were mostly 'allowed to waste their freedom as they pleased'.⁸⁶ As this chapter has revealed, contrary to Toussaint and Barnwell's assertion, by 1846 the majority of ex-apprentices, who had turned their backs on plantation life, were working outside the agricultural sector in various trades, debunking the stereotypical image of ex-apprentices as lazy and unwilling to work.⁸⁷ Divorced from the principal colonial economy of the island, the thriving market economy which emerged in the post-emancipation years was their future, not labouring on the sugar plantations. The 1846 census shows an employment rate of 65 percent for ex-apprentices.⁸⁸ By 1851, this figure had increased to 70 percent. In the 1851 census the ex-apprentice group also appears as a distinct class in Mauritius.⁸⁹ The number of ex-apprentices employed on the sugar plantations continued to decrease as their service contracts expired.

It is probably easier to agree with Toussaint and Barnwell when it comes to Jean Coco and the other ex-apprentices who committed transportable offences during the tumultuous period of dismantling the apprenticeship system. Their chance at freedom was wasted. Their fellow ex-apprentices in Mauritius had freedom of choice: freedom to control their time, escape plantation life, choose employer or work independently and, in doing so, finally throw off the remaining shackles of slavery and apprenticeship. By contrast, transported ex-apprentices were to spend years in an

⁸⁶ Barnwell and Toussaint, *A Short History of Mauritius*, p. 153.

⁸⁷ Carter and D'Unienville, *Unshackling Slaves*, p. 168.

⁸⁸ NLA, MAUR 1300, census report 1846/1851, p. 7.

⁸⁹ NLA, MAUR 1300, census report 1846/1851, pp. 4-5.

Australian penal colony where their labour was extracted, not by a Mauritian planter, but by a state-sponsored penal system.

In the Indian Ocean, in particular, the end to apprenticeship opened the door to a legitimate and free system of labour, considered even by abolitionists to be an acceptable alternative to slavery and apprenticeship. The number of Indians employed in fieldwork was on a fast upward trajectory, but these indentured workers unfortunately were to inherit many of the shackles discarded by apprentices. Crimes committed by Indians in Mauritius in the 1830s and 1840s would see some of them undertake another sea voyage, not towards their Indian homeland, but as convicts to the Australian penal colonies.

CHAPTER 7

'Simple Organs of Labour'¹: a small island and its 'archipelago'



Figure 11 A sketch of Indian convict, Palemy. In the file of the Court of First Instance, 1841. Palemy, a 24-year-old cook from Madras sentenced to transportation for life for wilfully setting fire to a hut in the camp on the property of George Hérissé, located at 'L'enfoncement des Prêtres': NAM, JB 311, Sep. 1841.

It never ought to be forgotten, that ... the interest of 'the Few' prevails over the interest of 'the Many', and is promoted at their expense. 'The Few' is the part that governs; 'the Many' the part that is governed. It is according to the interest of 'the Few' that colonies should be cultivated. This, if it is true, accounts for the attachment which most of the countries, that is, of the governments of modern Europe, have displayed to colonies.²

¹ TNA, CO 168/30, dispatch from William Gladstone to Governor William Gomm, 14 May 1846.

² An extract of the entry 'Colony' by James Mill in the 1824 edition of the *Encyclopaedia Britannica*, in Patrick Richardson, *Empire and Slavery*, part four, 'Documents', Longman, Green and Co, Ltd, London, 1968, p. 132.

Introduction

Indians had been part of the heterogeneous demographic makeup of Mauritius since the early days of colonisation.³ During the seventeenth and eighteenth centuries the Dutch twice attempted to establish a resupply station on the island to service ships going to and from Batavia, the Cape and Europe using slaves and other labourers from various parts of the Indian Ocean, including India. During French colonisation slaves and artisans arrived from the French enclaves of Pondicherry and Chandernagore to serve as domestic servants and as field and construction workers.⁴ Free Indian merchants also traded in the colony and their familiar presence became part of the commercial landscape on the island.⁵ Under British colonial rule, Mauritius started to receive convict transportees from India to labour on infrastructure programmes in support of the expanding sugar industry. Between 1815 and 1837 around 1,500 Indian convicts were transported to Mauritius.⁶

By the early 1830s, the Mauritian plantocracy had resigned itself to the fact that the abolition of slavery was imminent.⁷ Privately, planters commenced engaging labour recruitment agents. These agents trawled the densely populated Indian subcontinent and beyond to fill the anticipated shortfall in labour following abolition. Securing this free labour initially served to supplement the local workforce but, as the plantation

³ Sadasivam Jagananda, Reddi, 'The Establishment of the Indian Indenture System, 1834–1842', in Uttama Bissoondoyal, ed., *Indians Overseas: the Mauritian experience*, Mahatma Gandhi Institute, Moka, 1984, p. 1.

⁴ Reddi, 'The Establishment of the Indian Indenture System, 1834–1842', p. 1.

⁵ Marina Carter, 'The Transition from Slave to Indentured Labour in Mauritius' in *Slavery and Abolition*, vol. 14, no. 1, 1993, p. 115.

⁶ Clare Anderson *Convicts in the Indian Ocean: transportation from South Asia to Mauritius 1815–1853*, Macmillan Press, Houndsmills 2000, p. 6.

⁷ Mauritian planters started to source indentured labourers from outside Mauritius as early as 1829. After the abolition of slavery in 1835, many planters felt they were unable to rely on the apprenticeship scheme to supply the labour force needed on the sugar plantations.

agriculture continued to expand, the need for additional labourers also grew.⁸ Tense years of private ad hoc recruitment followed, mostly from rural India but also from China and other countries in the region. In 1834, on the eve of the abolition of slavery, 75 males and four females arrived in Mauritius as indentured workers from India.⁹ By 1839 this number had swelled to around 25,000.¹⁰ By 1846 the Indian community in Mauritius had more than doubled to around 56,000 (total population around 158,000) and increasing rapidly with the continuous flood of Indian labourers arriving in the colony.¹¹

After 1839, Mauritius was able to label itself as a free society. Prior to the abolition of slavery, the Mauritian plantocracy had earned a reputation as fiercely anti-abolitionist and during the apprenticeship many planters' attitudes still bore the mindset and the memories of chattel slavery. Post abolition, the metropolitan government and the Mauritian and Indian colonial administrators feared that further escalation of the unregulated private indentured recruitment by profit-driven Mauritian planters would lead to the perception that this was slavery in another guise.¹² As a result of these fears and public pressure, in 1839 the Indian colonial administration imposed an embargo

⁸ In 1810, sugar cane covered no more than one-sixth of the land surface and vast areas were still forest. Carter, 'The Transition from Slave to Indentured Labour in Mauritius', p. 114.

⁹ Saloni Deerpalsingh, and Marina Carter, *Select Documents on Indian Immigration Mauritius 1834–1926: the dispatch and allocation of indentured labour, vol. II*, Mahatma Gandhi Institute, Moka, 1996, appendix I, p. 309.

¹⁰ Marina Carter, 'The Family under Indenture: a Mauritian case study', *Journal of Mauritian Studies*, vol. 4, no. 1, 1992, p. 6. In the end, the Chinese labour recruitment was a failure as many Chinese refused to do the backbreaking work on the sugar plantations and returned to China. However, some stayed, adding another layer to the Mauritian demographic landscape.

¹¹ Amédée Nagapan, *Histoire de la Colonie: Isle de France – Île Maurice, 1721-1968*, Edition de l'Océan Indien, Rose Hill, 2010, p. 101.

¹² Hugh Tinker, *A New System of Slavery: The Export of Indian Labour Overseas 1830–1920*, Oxford University Press, London, 1974, p. 207; Richard Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, Cambridge University Press, Cambridge, 1999, p. 16.

on private recruiting.¹³ Predictably, the Mauritian plantocracy strongly opposed this embargo. The planters complained bitterly about this intrusion into their efforts to procure an external supply of labourers. As had been the case after the abolition of the slave trade almost 30 years earlier, the Mauritian planters again went underground to circumvent the regulations. Many hundreds, possibly thousands arrived in Mauritius during the period of the embargo.¹⁴ Eventually, in 1842, after three years of intense negotiations a legislation was passed (Act XV of 1842), allowing the commencement of a government-sponsored and regulated migration labour scheme from India to Mauritius.¹⁵

The aim of this chapter is to explore some of the social issues associated with the introduction of this experimental government-sponsored labour recruitment scheme which sprang into action on 23 January 1843. Using a series of case studies, this chapter argues that many of the crimes committed by the Indians in Mauritius during the first two decades of the immigration scheme occurred within the context and because of this labour policy. How did the newly arrived Indian labourers experience life in the camps? How did the skewed gender ratio which developed within the immigrant population impact personal relationships? The very harsh living and working environment experienced by these labourers during the early years of indenture led to many incidents of lateral violence. What caused the oppressed to

¹³ The Indian colonial administration had initially been in favour of immigration as a way of reducing the population. Ordinance 14 of 1839, in Dayachand Napal, *British Mauritius 1810–1948*, Mahatma Gandhi Institute, Moka, 1984, p. 95.

¹⁴ Napal, *British Mauritius 1810–1948*, p. 95.

¹⁵ Lord John Russell had advocated strongly for the recommencement of Indian migration to Mauritius. Marina Carter, *Voices from Indenture: experiences of Indian migrants in the British Empire*, Leicester University Press, London, 1996, p. 21.

become the oppressors? What were some of the strategies used by the colonial administration and the courts to communicate and uphold law and order?

The Labour Migration Policy and Attitudes to Indenture

Within a short period, thousands of Indians were disembarking in the bustling harbour of Port Louis, ready to fill the labour vacuum created by the abolition of the apprenticeship system. Apart from financing the labour migration scheme, the government controlled the recruitment, the annual quota (over 30,000 in the first year), the immigration formalities and the labour distribution. By the end of 1843 the initial trickle had turned into a flood. In the first year of the migration scheme Mauritius received around 35,000 (30,218 male and 4,307 female) indentured workers.¹⁶ At the end of 1846 around 56,000 Indian labourers had arrived in Mauritius, comprising approximately 35 percent of the total population of around 159,000.¹⁷

As historians of the Indian indenture experiment have acknowledged, this was not an attempt to substitute one race with another.¹⁸ In the context of labour migration, what set this scheme apart was the speed with which the indentured labour force was introduced and the homogeneity of those arriving—mostly poor young males.

Reverend Patrick Beaton, a visitor to the island in the early 1850s, described them as

¹⁶ This was the highest number of immigrants arriving in one year throughout the entire period of Indian immigration, apart from 1859, when 31,643 males and 12,754 females arrived in Mauritius. Refer to table in Deepalsingh and Carter, *Select Documents on Indian Immigration Mauritius 1834–1926*, appendix I, p. 309.

¹⁷ By 1871, people of Indian origin comprised more than two-third of the island's permanent population. Population census for Mauritius, in Amédée Nagapen, *Histoire de la Colonie: Isle de France – Île Maurice, 1721-1968*, Edition de l'Océan Indien, Rose Hill, 2010, Tableau II, Evolution démographique – 1846-1911, p. 101; Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, pp. 17 and 58. See Appendices 1 and 2 which illustrates the spikes in the labour migration.

¹⁸ Carter, 'The Transition from Slave to Indentured Labour in Mauritius', pp. 123-124.

'possessed of bone and muscle'.¹⁹ Mauritius became, according to Hugh Tinker, the most 'Indianized' of the non-Indian colonies in the British Empire.²⁰ The complex and harsh environment which developed in the labour camps in Mauritius under the state-sponsored and operated indentured labour programme did not engender the same metropolitan public outrage as had been the case during slavery, when the workforce was under private planter control.

In the past, a perception that Indian men in particular lacked physical prowess had been commonplace. They were seen as physically weak and unsuited to hard labour in the field and more useful as house servants with a reputation for cleanliness and industriousness.²¹ In the wake of the new labour scheme, however, crudely labeled stereotypes soon emerged, attaching certain unflattering racial characteristics to the new arrivals, such as being filthy, ignorant, unreliable and untrustworthy. The 'inferior' qualities ascribed to indentured labourers provided the authorities with solid justification for repressive measures. The belief in this inherent inferiority was born out in a dispatch from Governor Lionel Smith to Lord John Russell in December 1840. He wrote:

... considering that these people from India have been the outpouring of the lowest caste population of each presidency, who are deplorably disorderly and dissolute, there is more to wonder that their treatment has been so little tainted with planter's tyranny for men who are still mourning over the loss of their slaves.²²

¹⁹ Patrick Beaton, *Creoles and Coolies or Five Years in Mauritius*, J. Nesbit, London, 1859, p. 74.

²⁰ Tinker, *A New System of Slavery*, p. xiii.

²¹ Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, pp. 58–59.

²² TNA, PRO 30/12/31/5, dispatch from Governor Lionel Smith to Lord John Russell, 29 Dec. 1840, p. 3.

These sentiments did not show a great deal of sympathy for the plight of the Indian workforce. Smith appears more understanding of the planters' loss of their human property and power.

Unlike some of the faltering sugar colonies in the Caribbean, the introduction of a vast Indian labour force ensured the island's economic viability and guaranteed that the colony would no longer be a burden on the imperial purse. The then Secretary of State for War and the Colonies, Lord Stanley justified the indentured migration scheme by claiming that ex-apprentices were unreliable and 'addicted to idle, vagrant and unprofitable habits'.²³ Their attitudes, according to Stanley, had forced the government's hand and they could therefore 'have no reasonable course for complaint if measures be taken by the Legislature to introduce other workmen who will undertake the duties which they [ex-apprentices] decline.'²⁴

Reverend Beaton was also in favour of the government-sponsored immigration scheme. He observed that if the Indian labour market had been left unregulated and '[w]ithout the protection of the Government also, there would have been a danger of these men being treated with injustice, and reduced even to a state of absolute slavery, when employed by unprincipled masters'.²⁵ Unfortunately, history shows that the new government-sponsored labour scheme did not always offer protection from unscrupulous masters as Beaton had hoped. The transformation of the labour market

²³ Lord Stanley, debate at the E. I. H., 22 Jun., East India Labour, in *The Asiatic Journal and Monthly Register for British Foreign India, China and Australia*, vol. xxviii, New Series, May-Aug. 1842, p. 197. For more on Lord Stanley see Lord Stanley, <http://adb.anu.edu.au/biography/stanley-edward-george-geoffrey-smith-2691>.

²⁴ Dispatch no. 47 from Lord Stanley to Lionel Smith, 22 Jan. 1842, p. 32. <https://books.google.com.au/books>, in seasonal Papers printed by order of the House of Lords.

²⁵ Patrick Beaton, *Creoles and Coolies*, p. 74.

through Indian immigration facilitated, and in many ways sealed the fate of both planters and emancipated slaves at the start of the fourth decade of the nineteenth century.²⁶

Exploiting the large reservoir of cheap Indian labour was integral to British imperialist economic expansion and wealth creation. A critical question to ask in this context is why did indenture migration become the solution for a labour-hungry colony like Mauritius? Part of the answer was the geographical proximity of the Indian subcontinent. The petition from a group of planters, enclosed in a dispatch from Governor William Nicolay dated 21 May 1839, offers further clues, suggesting that 'the climate of this island is well known to be very salubrious and congenial to the constitution of the native Indian.'²⁷ M. D. North-Coombes explains that this form of stereotyping and 'racial division of labour' underlined a tendency to implement racially discriminatory labour policies in response to different labour needs at various times in the island's history.²⁸ Eric Foner emphasises that although these were paid labourers the 'spread of imperialism went hand in hand with broad acceptance of racist ideas concerning tropical peoples', in particular with regards to their 'reluctance to labour.'²⁹

Randolph Persaud has pointed out that in the context of the introduction of 'Coolie' labourers in the former slave colony of British Guiana, there was no 'absolute labour

²⁶ Foner, *Nothing but Freedom: emancipation and its legacy*, p. 23.

²⁷ TNA, PRO 30/12/31/5, Charles Anderson, *Introduction of Indian Labour at Mauritius*, London, 1840, p. 140

²⁸ M. D. North-Coombes, 'From Slavery to Indenture: forced labour in the political economy of Mauritius 1834-1867', in Kay Saunders, ed., *Indentured Labour in the British Empire 1834-1920*, Croom Helm Ltd, Kent, 1984, pp. 100-101.

²⁹ Eric Foner, *Nothing but Freedom: emancipation and its legacy*, Louisiana State University Press, Baton Rouge, 2011, p. 23.

shortage' in terms of a 'head count', concluding that decisions made in relation to labour were 'essentially political in nature'.³⁰ As the sugar industry grew, indenture became part of a new 'cheap labour strategy'.³¹ Planters insisted that control over the labour processes on the sugar plantations were vital to productivity outputs. The control of the workforce, as had been the case during slavery and apprenticeship, became predicated on a repressive, authoritarian and hierarchical apparatus – a dominant planter hegemony supported by the colonial administration and judiciary.

Once the Indians entered the sugar plantations, the merits of a free labour market vanished.³² The aim was to extract maximum sweat and toil to complete the task, regardless of the human cost. The ability to control wages and the indentured labourers, who had all signed five-year labour contracts prior to leaving India, also worked in favour of the plantation owners. Hugh Tinker asserts that the treatment of the Indian workforce, the legitimate government-sponsored scheme of indenture and the mode of production had a substantive overlap with powerful legacies of slavery.³³

In the early 1840s, indentured workers leaving the various embarkation points on the Indian subcontinent to voyage across the ocean thought their lives in Mauritius would only be temporary.³⁴ Most of those arriving were accustomed to agricultural labour but

³⁰ Randolph Persaud, 'Colonial Violence: race and gender on the sugar plantations in British Guiana', in Alexander Anievas, Niva Manchanda and Robbie Shilliam, eds, *Race and Racism and International Relations: confronting the global colour line*, Routledge, New York, 2015, p. 123.

³¹ Carter, 'The Transition from Slave to Indentured Labour in Mauritius', p. 122.

³² Allen, *Slaves, Freedmen and Indentured Labourers in Colonial Mauritius*, p. 56-59.

³³ Tinker, *A New System of Slavery*, p. xiv.

³⁴ Only one third of the indentured workforce who arrived in Mauritius during the immigration period lasting almost 90 years returned to India. Marina Carter, 'Founding an Island Society: inter-ethnic relationships in the Isle de France', in Marina Carter, ed., *Colouring the Rainbow: Mauritian society in the making*, Centre for Research on Indian Ocean Societies, Port Louis, 1998, pp. 1–30; Pavi Ramhota & Vishwanaden Govinden, 'Cavadee and Kalimai: inter-ethnic participation in Mauritian rituals', in

unaccustomed to the factory-like mode of production and the arduous and dreary conditions of industrial plantation life. Dislocated from their cultural heritage and family, the labour camps housing the new indentured workers, even in large groups, became vulnerable to exploitation. In this tough environment of transitioning labour practices many Indians committed crimes which saw them before the courts in Mauritius.

L'Extrait: a message from the judiciary to the people

The tradition of publicly displaying ordinances began in the mid-eighteenth century. The practice, aimed at controlling the public conduct of slaves, stipulated that ordinances should be posted or read where and whenever deemed necessary.³⁵ These ordinances, before the arrival of the printing press in Mauritius in 1773, were posted at several key *endroits* around the island where slaves or free citizens could read or have read to them the latest official decree from the government.³⁶ These public notices not only conveyed new ordinances or changes to existing ones, but importantly often reflected the perceptions and concerns of lawmakers and administrators of the day.

As a form of social control, the Court of Assizes in Mauritius at times would communicate directly with the community using publically posted so-called *Extraits*.³⁷ An *Extrait* was a public notice detailing the judgments handed down in certain criminal cases. All the *Extraits* uncovered during the research for this thesis referred to

Marina Carter, ed., *Colouring the Rainbow*, Port Louis, 1998, p. 136; Tinker, *A New System of Slavery*, p. 179.

³⁵Vijayalakshmi Teelock, *Mauritian History: from its beginnings to modern times*, Mahatma Gandhi Institute, Moka, 2009, pp. xvi-xviii.

³⁶ Teelock, *Mauritian History: from its beginnings to modern times*, pp. xvi-xviii.

³⁷ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary with *Extrait*, (Samba, Osensa, Yacousa and Salicouty), pp. 33–39.

crimes resulting in transportation. They implicitly warned of physical removal from the colony to a place of punishment across the seas. The sentences to transportation ranged from seven years to life.

All except one of the 23 *Extraits* uncovered for the period 1840 to 1844 recorded various crimes against property.³⁸ Arson, wilful destruction of property, burglaries and theft were the most prevalent causes for the Court of Assizes to instruct the display of an *Extrait*.³⁹ The exception related to a sexual offence—the attempted rape of a child.⁴⁰ Nine of the *Extraits* related to crimes committed by Indians, nine by Mauritian Creoles, two by Chinese, two by Mozambiquans and one by a Malagasy.⁴¹

The presiding judge in the Court of Assizes would give instructions to display an *Extrait* at a public or private location.⁴² The guilty verdict included the instruction that 'the *Extrait* of the present judgment be put on public display' either at the Civil Commissariat of the various districts such as Pamplémousses, Flacq, Plaines Wilhem and Grand Port or at a bazaar. The market in Port Louis was a popular venue for displaying these *Extraits*—being a place where large groups of people would congregate and communicate. These publically displayed messages were also a form of public, non-violent naming and shaming. For example, in September 1844, an Indian labourer, Dealy, was found guilty of highway robbery after he threatened a

³⁸ This of course does not mean that this form of public communication by the courts did not happen before 1840 or after 1844.

³⁹ Seven of the *Extraits* relate to arson, six to common theft, one to complicity to theft, five to breaking and entering, one to highway robbery and one to attempted theft. One *Extrait* was for the attempted rape of a child.

⁴⁰ NAM JB 308, trial of Shenmursing, 25 Mar. 1840; SLNSW, TP, vol. 144, Court of Assizes, trial summary of Shenmursing, 25 Mar. 1840.

⁴¹ Interestingly, but perhaps coincidentally, these *Extraits* are representative of the mix of ethnic origins typical of the Mauritian population at this time.

⁴² SLNSW, DLADD 540/38-42, trial summary with *Extrait*, (Samba, Osensa, Salicouty and Yacousa), 1 Dec. 1843, pp. 33–39.

woman with a knife on one of the public roads leading to Port Louis, stealing the parcel of clothing she was carrying which contained a white man's shirt, a pair of blue trousers and three white handkerchiefs. Dealy was sentenced to transportation for 10 years. The presiding judge, James Wilson, ordered the display of an *Extrait* at the bazaar in Port Louis and at the Commissariat of Flacq, the district where Dealy had lived at the time of the offence.⁴³ This blatant and violent attack on a public road would have been most concerning to the Mauritian authorities and the posting of this *Extrait* was to serve as a warning to would-be offenders.

The display of an *Extrait* on a private property had a more specific target audience. The judge would sometimes stipulate the display of an *Extrait* on the building of a work depot where the crime had been committed; or where the perpetrator had worked; or in a prominent place in the labour camp of the convicted felon(s) or on the private residence of a plantation owner. In this way the Court of Assizes signposted the crimes and subsequent punishments, maximising the deterrent effects by conveying a strong message to a specifically intended audience. Booth was a 25-year-old Malagasy labourer employed as a guard on a property belonging to Mr. Aubin at La Montagne Longue in the district of Pamplemoussess.⁴⁴ In June 1843, he scaled (using a ladder) an internal partition wall in a hut separating the rooms of two other workers, Jean Casimir and Thesee Malapan. In Malapan's room, Booth forced open a wooden chest and stole 350 *piastres*. He was sentenced to transportation for 10 years and transported to Van Diemen's Land in 1844. The Court of Assizes ordered that an

⁴³ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Dealy, 24 Sep. 1844, pp. 145–149.

⁴⁴ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Booth, 27 Nov. 1843, pp. 65–69.

Extrait was to be posted at the bazaar in Port Louis and on the home depot building of the workers on the Aubin property.⁴⁵

Transportation from Mauritius reached its peak in the early 1840s, reflecting the anxiety in the community during the uneasy transition from apprenticeship to indenture. The punishment of transportation in the form of removal from the 'scene of the crime' intended to splinter social and criminal networks. Hard work as a convict labourer would lead to repentance and restore the moral fibre of the individual. Deterrence, reform and labour were key concepts in the transportation debate and the foundation for its implementation.

Lateral Violence in the Camps

From the outset the colonial office in London envisaged the government-sponsored Indian indentured labour migration scheme to have a transitory labour population of young able-bodied men. These labourers would fulfil their five-year contracts and then return home to India. In its early phase, colonial expansion and economic market forces drove this scheme and the economic benefits far outweighed the potentially serious social implications of a gender-skewed workforce. As time went on it became increasingly clear that fewer than expected of these labourers returned home. One reason for this may have been, as Governor Smith had outlined to Lord John Russell in 1840, that the majority of these labourers came from poor rural backgrounds, which meant there was little or no incentive to return to their place of birth.⁴⁶

⁴⁵ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Booth, 27 Nov. 1843, pp. 65–69.

⁴⁶ TNA, PRO 30/12/31/5, dispatch from Governor Lionel Smith to Lord John Russell, 29 Dec. 1840, p. 3.

Colonialism, the need for a productive workforce and the authoritarian nature of the camps shaped the lives of these economic migrants in multiple ways in the first decades of the migration scheme. Some of these camps resembled ghettos and the planters enforced strict quarantine conditions. Geographical isolation and limited opportunity for mobility between the camps left workers insulated. The limitation imposed by geography reduced outside influences and communication and was a deliberately strategy to maintain control over the workforce. As Sudhansu Mookherji explains, the social life of Indians in Mauritius 'represented a disquieting spectacle'.⁴⁷

The power imbalance between the state, the planters and the contracted labourers, affected personal relationships. As was the case during slavery, the planters were weary of geographical and linguistic connections and social relationships. Planters often broke up social clusters in a camp to stop the creation of strong personal bonds, thus increasing the vulnerability of the Indian workforce and cement planter power. In Indian culture, having a wife was a sign of status and prosperity. The gender imbalance left indentured labourers with scant possibility of marriage and a family life and the lack of such opportunities served to further fuel tensions in the camps.

Breaches of rigorously enforced state obligations associated with the labour contracts also led to the separation of those with families. Husbands were separated from wives or partners and children from parents as many labourers spent short or long periods in prison for various breaches of their contracts. These family separations left women

⁴⁷ Sudhansu B. Mookherji, 'Indians in Mauritius (1842-1870)', *India Quarterly*, vol. 15, 1959, p. 372.

and children in particular, vulnerable and would sometimes lead to the breakdown of existing family units.

The binary of violence in the relationship between the coloniser and the colonised or between the oppressor and the oppressed is a well-established phenomenon. Less emphasis has been placed on the fact that oppressive labour systems, both free and unfree, can foster forms of lateral violence, across groups and individuals or across racial and gender divides. Exploitative labour practices, substandard accommodation and living conditions, a serious gender imbalance, insecure relationships and jealousy often fuelled this form of violence.

Following the rapid influx of Indian indentured labourers, many camps soon became overcrowded. The spatial configuration in the camps and the lack of personal space was accentuated by what Persaud suggests was a colonial society's 'spatial techniques of discipline and regulation of daily life on the plantations.'⁴⁸ *Les cases* (the huts) offered to the newcomers had previously been occupied by slaves. These poorly constructed huts were primitive at best, held up by a flimsy framework covered in straw or sometimes covered in straw and a layer of mud.⁴⁹ They provided inadequate shelter and lacked protection from the cyclonic storms which often lashed the island during the summer. Most camps had a poor water supply and sanitation was inadequate.⁵⁰ As a result, disease was rife.

⁴⁸ Persaud, 'Colonial Violence: race and gender on the sugar plantations in British Guiana', p. 132.

⁴⁹ Tinker, *A New System of Slavery*, p. 207.

⁵⁰ North-Coombes, 'From Slavery to Indenture' p. 102.

The complexities of segregation and stratification within Indian society and culture also came to the fore when Indian labourers lived and worked in close proximity, often fragmenting old values and solidarities. This forced social interaction between the various cultural and religious groups created a certain volatility. Back home in India, sharing a meal with members of other casts had been inconceivable, yet in these camps social and spatial relationships and power had to be re-configured, creating different values and new social structures.⁵¹

The conditions in the labour camps inevitably spilt over into disputes between labourers, often resulting in violence and destruction of property, reinforcing beliefs that these were unruly people, prone to criminal behaviour. Arson, as a form of resistance during slavery, had proved a powerful 'tool' in the hands of slaves against their masters. By contrast, Indians in the labour camps used arson against other labourers as a form of revenge, settling of scores, disputes over property or jealousy. Burning down each other's huts, the only personal space anchoring a worker's existence in the camp, was a dramatic way of settling a dispute. In the early 1840s, the criminal cases from the Court of Assizes relating to arson, which resulted in a conviction to transportation, mostly represent the end result of quarrels and disagreements between labourers.

The dispute between Petit Peroumal, a 35-year-old Indian labourer from Madras working and living on the property of Bréard and Desvaux at Moka, and one of his co-

⁵¹ The convicts who arrived in Mauritius between 1815 and 1837 experienced similar cultural and religious assimilation. More often though, the willingness to co-exist became the cement which held people together, forging new inter-cultural and inter-religious friendships and ties and creating their own social activities between Indian convicts and the indentured workers in the camps. For more on this topic see Anderson, *Convicts in the Indian Ocean*.

workers is illustrative of the tensions which sometimes flared up between labourers. In January 1842 an argument over an unpaid debt broke out between Petit Peroumal and a fellow labourer also living in the camp. Grand Peroumal explained that he was unable to repay the loan of two rupees until he received his wages. An irate Petit Peroumal threatened to cut the other labourer's throat with a sickle or set fire to his hut.⁵² Around 11 o'clock that night, notwithstanding these earlier threats, Grand Peroumal decided to spend time with other labourers away from his hut. Shortly after, Pitcheu and Ramsamy Chetty spotted Petit Peroumal standing outside Polgan's hut tearing some straw from the roof. Almost instantly flames burst from this hut and the fire quickly spread to the adjacent hut of Grand Peroumal, destroying both huts and their contents. The two Indians pursued Petit Peroumal without success. When finally apprehended he denied the charge of arson, claiming that he had been asleep in his own hut all night.⁵³ Depositions of witnesses later established sufficient proof of guilt and Petit Peroumal was sentenced to transportation for seven years.

In the initial phase of the migration scheme most women who arrived were single and poor. Some came involuntarily; kidnapped and then forced to sign labour contracts prior to embarkation to Mauritius. Yet other women saw labour migration as an opportunity for upward mobility and independence or as a way to be reunited with family members or friends. In the first two decades of indenture migration, however, the scarcity of women caused many camps to develop in a distorted fashion due to the deliberate demographic manipulation of the indentured population.⁵⁴ After 1834, only

⁵² NAM, JB 329, trial of Petit Peroumal, 2 Mar. 1842.

⁵³ NAM, JB 329, trial of Petit Peroumal, 2 Mar. 1842.

⁵⁴ Appendices 1 and 2 clearly show the gender imbalance within the Indian migrant population.

one percent of the indentured workforce was female.⁵⁵ On his visit to Mauritius in 1838, James Backhouse, a Quaker missionary, commented on the plight of the Indian indentured workers. He wrote, 'perhaps the greatest evil attendant on their introduction into the Mauritius was the small proportion of females imported with them.'⁵⁶ By 1841, the number of women had increased to almost three percent of the Indian population in Mauritius.⁵⁷ Throughout the 1840s the Indian workforce remained highly homogenous and only around six percent of workers who arrived in this period were female.⁵⁸

The skewed gender ratio, coupled with the general pressures of harsh state regulations governing indentureship, planter power and social and environmental factors saw many labour camps become hotbeds of violence and crime. The scarcities of women in the camps led to husbands often accusing wives of adulterous behaviour and they became particularly vulnerable to violent attacks. The Mauritian trial records indicate that many of the violent attacks against women in particular were quotidian in character and appear localised and targeted.

Seduction and jealousy were at the heart of a dispute between Virapin (Petit Vira), a 47-year-old Indian from Madras and his wife, Tiroumali, in November 1843.⁵⁹

⁵⁵ Uttama Bissoondoyal, 'Introduction', in Uttama Bissoondoyal, ed., *Indians Overseas: the Mauritian experience*, Mahatma Gandhi Institute, Moka, 1984, (no page number).

⁵⁶ James Backhouse, *A Narrative of a Visit to the Mauritius and South Africa*, Hamilton, Adams & Co, London, p. 36.

⁵⁷ Marina Carter, *Lakshmi's Legacy: the testimonies of Indian women in 19th century Mauritius*, Editions de l'Océan Indien, Rose Hill, 1994, Table 2. 2, the male and female Indian population in Mauritius, p. 70.

⁵⁸ By the early 1850s the female ratio had increased to 22.2 percent of the total population. Deerpalsingh & Carter, *Select Documents on Indian Immigration Mauritius 1834–1926*, appendix I, p. 309; Beaton, *Creoles and Coolies*, p. 74.

⁵⁹ NAM, JB 340, Court of Assizes, trial of Virapin (Petit Vira), 26 Jun. 1844.

Tiroumali was sitting outside another man's hut on the property belonging to Mr. Antoine Bestel in the district of Pamplemousses when an argument broke out between the couple and the owner of the hut, Montoussamy. Virapin loudly declared that if Tiroumali spent the night in Montoussamy's bed he would kill them both by setting fire to his hut. Tiroumali did not return to the hut she shared with Virapin. Later that night Virapin set fire to the hut where his wife was sleeping but the occupants managed to escape the flames. With the evidence stacked against him, Virapin was found guilty and was sentenced to transportation for seven years.⁶⁰

An incident of brutal violence happened in November 1844. Bassy and Bilassy lived as a married couple in a camp on the property of Mr. Lousteau Lalanne in the district of *Savanne*.⁶¹ It was a tumultuous relationship and Bilassy often suffered brutal physical abuse at the hands of her husband. Unable to endure further abuse, she fled. Bassy asked his employer's permission to take time off to search for her. He eventually found her with another Indian, Bissone, who worked for Mr. George Elliot, the stipendiary magistrate in the district of *Savanne*. Perhaps Bilassy had felt safe on the property of a man of the law and so refused to go with her husband. In a rage Bassy grabbed an axe from inside Bissone's hut and violently struck his wife. Bissone managed to seize the axe and ran to get help. By the time he returned Bassy had disappeared.⁶² Bilassy had sustained horrific injuries but survived the attack. Bassy was arrested a few days later. He initially admitted to the crime, but later stated that

⁶⁰ NAM, JB 340, Court of Assizes, trial of Virapin (Petit Vira), 26 Jun. 1844.

⁶¹ NAM, JB 346, Court of Assizes, trial of Bassy, 15 Mar. 1845.

⁶² NAM, JB 346, Court of Assizes, trial of Bassy, 15 Mar. 1845.

Bissone was the attacker. This argument did not hold up in court and Bassy was charged with attempted murder and sentenced to transportation for life.⁶³

The Mauritian authorities supported a husband's right to take time off to 'recapture' his wife. This official lack of consideration for the plight of Indian females often increased the physical danger of women like Bilassy. As such, the mistreatment of wives of Indian workers was not a valid reason for them to run away. Carter asserts that the marriage legislation in Mauritius had a 'specific punitive objective' and 'these women were viewed as mere property'.⁶⁴ Inherent cultural factors and the potential for violence against women in the camps may also explain the slow uptake in bringing wives and families to Mauritius.⁶⁵ Tinker claims that many Indian married men deliberately left their wives at home, fearing they would be seduced into living with another man, possibly of a higher rank or position.⁶⁶

In another vicious attack in early March 1844, Indian Assa attempted to murder his partner Gangay. Accusing her of having an affair, in a fury he cut her face and arms with a razor and attempted to cut her throat, execution style. Believing her to be dead, he fled. A barely alive Gangay was able to crawl to a neighbour's hut. She survived the vicious attack and was able to testify against her attacker in court.⁶⁷ On New Year's Day 1845, another young Indian woman was not so lucky. Moutouvirin

⁶³ NAM, JB 346, Court of Assizes, trial of Bassy, 15 Mar. 1845.

⁶⁴ Carter, *Lakshmi's Legacy*, p. 59

⁶⁵ Carter, 'The Family under Indenture', pp. 1–21.

⁶⁶ Tinker, *A New System of Slavery*, p. 202.

⁶⁷ SLNSW, DLADD540/38-42, Court of Assizes, trial summary for Assa, 24 Sep. 1844, pp. 153–157; NAM, JB 341, trial of Assa, 24 Sep. 1844.

brutally murdered his wife Valeyenne, having caught her with another man.⁶⁸ The doctor called in to assess the condition of the body stated the injuries were so horrific that it was impossible to determine the exact cause of death, although it was clear the weapon used in the attack was a sickle. Assa was sentenced to transportation for life and Moutouvirin to 20 years. They were among the last to be transported from Mauritius to Van Diemen's Land in 1845.⁶⁹

The trial records also highlight the vulnerability of children who lived in some of the labour camps, inhabited by both Indian labourers and ex-apprentices. On Sunday 10 November 1839 around eight o'clock in the morning, screams were heard in the labour camp of Mr. Hardy Senior. Marianne, the five-year-old daughter of ex-apprentice Valmont, who was alone in her father's hut, was being dragged by the arm to the hut of Indian labourer Shenmursing where the terrified girl was thrown onto a bed.⁷⁰ Almost immediately the door, locked from the inside with a latch, was torn open by frantic Indian labourers. After a scuffle they rescued Marianne from the hut and returned her to her father's care. The police doctor, Charles Michel, later examined Marianne at the police station and found her to be unharmed. Shenmursing claimed that he had been drinking *eau de vie* and could not remember the incident. Sundays, when alcohol consumption was common, appear to have been a dangerous time for women and children in the camps.⁷¹

Why the police did not arrest Shenmursing and charge him with attempted rape on the Sunday is unclear. The next morning he was still in the camp, still drunk and unable to

⁶⁸ NAM, JB 347, trial of Moutouvirin, 13 Mar. 1845.

⁶⁹ NAM, JB 341, trial of Assa, 24 Sep. 1844.

⁷⁰ SLNSW, TP, vol. 144, Court of Assizes, trial summary of Shenmursing, 25 Mar. 1840.

⁷¹ SLNSW, TP, vol. 144, Court of Assizes, trial summary of Shenmursing, 25 Mar. 1840.

work. He proceeded to go on a rampage attacking many huts, including the huts of Gouicon and Maddon, two of the labourers who had rescued Marianne the previous day. Gouicon claimed that four rupees were missing from his hut and he accused Shenmursing of theft. Shenmursing denied the accusation. Due to the lack of evidence the police was unable to charge him with either theft or destruction of property, as they found no money and the damage to the huts was minimal. The police, however, charged him with attempted rape. Found guilty, he was sentenced to transportation for 14 years.⁷²

The Court of Assizes ordered the display of an *Extrait* relating to Shenmursing's crime on the private property of Mr. Hardy Senior in the district of Flacq. One may speculate that the reason for displaying an *Extrait* in this particular labour camp related to other possible attacks on children and Shenmursing's sentence to transportation and removal from the property served as a deterrent. Itchingono, an Indian cane worker, was another who preyed on young children living in labour camps. In 1842 he was transported for life for the vicious rape of a five-year-old girl, having lured her to a shed on the property of Robillard and Lamusse at Grand Port where they both lived, under the pretence of helping her to find some eggs.⁷³

It was not only in the camps that children were vulnerable. The attack on 10-year-old Pierre Jean happened within the household of Stipendiary Magistrate E. C. Kelly in the district of *Rivière du Rempart*. His guard and Indian-language interpreter, Seik Mira, was accused of 'the unspeakable and unnatural' act of sodomy on Pierre Jean

⁷² NAM, JB 308, trial of Shenmursing, 25 Mar. 1840.

⁷³ NAM, JB 330, trial of Itchingono, 1 Mar. 1842.

and two other young boys.⁷⁴ He protested his innocence, claiming he was drunk at the time and stated he had no recollection of the incident. However, reliable witnesses and physical evidence saw him before Judge and First President James Wilson in the Court of Assizes in September 1842. Immediately following the attack, Stipendiary Magistrate Kelly wrote to the chief commissioner of police voicing his 'disgust', requesting Seik Mira's immediate removal from legal proceedings and 'request you will be pleased to direct, that a Guard speaking the Indian language may be immediately sent to me, as until then I can hear no complaints where the Indian labourers are concerned.'⁷⁵ Found guilty, Seik Mira was sentenced to transportation for life. He arrived in Van Diemen's Land in 1843.

From the early 1840s, the Colonial Office in London was aware of the many adverse social impacts the gender imbalance in particular had on Mauritian society. In the late 1840s, the colonial administration conceded that colonisation rather than labour migration was preferable. As time went on family groups started arriving and more women and children joined husbands and other family members who had chosen to stay on in the colony.⁷⁶ Finally, in 1853 to redress the gender imbalance within the Indian labour force on the island, it was determined that the ratio should be at least one female for every three males.⁷⁷ This ratio eventually rose to around 60 percent males and 40 percent females.

⁷⁴ NAM, JB 325, trial of Seik Mira, 6 Sep. 1842.

⁷⁵ NAM, JB 325, letter from Stipendiary Magistrate E. C. Kelly to chief commissioner of police, 6 Feb. 1842.

⁷⁶ Marina Carter, *Lakshmi's Legacy*, 34-38.

⁷⁷ Martin Lynn, 'British Policy, Trade and Informal Empire in the Mid-Nineteenth Century', in Andrew Porter and W. Roger Louis, eds, *The Oxford History of the British Empire, Volume III The Nineteenth Century* Oxford, Oxford University Press, New York, 1999, p. 96.

Indians Destined for Australian Shores

At least 39 of the 136 convicts transported from Mauritius to the Australian penal colonies were born in India: 16 from Calcutta, 13 from Madras, three from Bombay and seven recorded as being Indian without stating a specific geographic location within the subcontinent.⁷⁸ Even this early in the immigration phase, as was the case throughout the almost 90 years of labour migration, labourers embarking from Calcutta and Madras made up the majority of the total indentured work force. Of the 39 transported convicts, only one was female (Samba).⁷⁹ The Indian convicts ranged in age from 17 to 47 years. Two of the convicts were under 20 years of age. The majority (28) were between 20 and 40, the prime age for workers selected to endure the harsh conditions in the cane fields. Five were over 40 years old. Only two Indians, Bargata and Doumamot, were transported to New South Wales prior to the abolition of slavery in 1835.⁸⁰ Four of the transportees were convicts transported from India to Mauritius only to be re-transported to Australia for committing serious offences while serving their sentence on the island. Indian convicts and indentured labourers from the very start of British colonisation of Mauritius became part of the convict traffic patterns crossing the Indian Ocean in multiple directions.

⁷⁸ NAM, JB series, 1825 to 1845.

⁷⁹ SLNSW, SLNSW, DLADD, 540/38-42, Court of Assizes, trial summary of Samba, Osensa, Yacousa and Salicouty, 1 Dec. 1843.

⁸⁰ NAM, JB 262; trial of Doumamot, 24 Apr. 1834; In 1834, Doumamot, a 26-year-old seaman/lascar from Calcutta was initially given the death sentence for wilfully and maliciously trying to kill a slave by setting fire to one of the huts of the blacks on the estate of Mr. Jean Baptist Rivière. In consideration of some alleviating circumstances, the sentence was commuted to transportation for seven years. NAM, JB 259, trial of Bargata, 23 Apr. 1834; In 1834 Bargata, a 35-year-old Indian, also from Calcutta, was transported for 14 years for the attempted rape of Aurelie, the 5-year-old daughter of his employer. Cassandra Pybus and James Bradley, 'From Slavery to Servitude: the Australian exile of Elizabeth and Constance', *Journal of Australian Colonial History*, vol. 7, 2007, pp. 29–50; Bargata was a convict passenger on the same ship as the two slave girls Elisabeth and Constance. Pybus and Bradley point out that a felon convicted of attempted rape of a child was transported on the same ship as these two young girls. *The Dart* was a minor vessel and not specifically designed for carrying convicts. As such, all passengers on the ship would have had some form of contact, making these two slave girls vulnerable. See also Clare Anderson, *Subaltern Lives: biographies of colonialism in the Indian Ocean World, 1790–1920*, Cambridge University Press, Cambridge 2012, p. 78.

Of the 1,500 convicts transported from India to Mauritius (1815–1837), 47 committed secondary offences which resulted in either execution, transportation, hard labour, prison or a fine.⁸¹ Convicts transported from India to Mauritius were tried as free citizens. During the period of slavery, slaves had at times committed crimes in order to escape the drudgery of plantation life or to receive better rations in prison. The same was true of some of the Indian convicts. The introduction of Ordinance 5, Article 52 of 1835, saw the 'loophole' of 'time off in jail' closed.⁸² Prior to 1835, Indian re-offenders before the criminal courts in Mauritius returned to barracks to continue their original sentences.⁸³ After 1835, this ineffectual practice also changed and sentences handed down by the Mauritian courts would over-ride previous sentences, which saw some of the Indian recidivists re-transported to the Australian penal colonies.⁸⁴

Among them was Ratamsing, a convict labourer from Bombay attached to the prison at Grand Rivière.⁸⁵ His offence(s) in Bombay was not recorded in the Mauritian trial records. Initially arrested with three other Indians, only Ratamsing was convicted of burglary. At the time of his arrest he was 38 years old and working on the property of Etienne Benoit at Grand Rivière. Although most of the Indian convicts worked in road gangs on infrastructure projects, some of the more resourceful convicts were offered 'lighter duties'. Obviously able to move around undetected, during the night of 6

⁸¹ Calculated data in Anderson, *Convicts in the Indian Ocean*, p. 136, appendix C 4. See also Clare Anderson, 'Race, Caste and Hierarchy: the creation of inter-convict conflict in the penal settlements of South East Asia and the Indian Ocean, c.1790–1880', in 'Exiles of Empire: convict experience and penal policy 1788-1852', *Tasmanian Historical Studies: Special Convict Issue*, vol. 6, no. 2, 1999, pp. 81–95.

⁸² CO 169/2, Ordinance 5, Article 52, 1835 for the purpose of regulating the internal order and discipline of the prisoners, 24 Feb. 1835.

⁸³ Anderson, *Convicts in the Indian Ocean*, pp. 37–38.

⁸⁴ NAM, JB 307/312; trial of Sheik Adam, 8 Oct. 1840; NAM, JB 331 trial of Ratamsing, 23 Nov. 1843; NAM, JB 291, trial of Tajea Versay, 25 Jun. 1838; DLADD540/38-42, pp. 25–29, Court of Assizes, trial summary for Battoo, 2 Dec. 1843.

⁸⁵ SLNSW, DLADD540/38-42; Court of Assizes, trial summary of Ratamsing, pp. 130-136; NAM, JB 331 trial of Ratamsing, 23 Nov. 1843.

November 1843 Ratamsing broke into a shop in *Rue Brabant*, Port Louis. When the shop owner Monrose Malot, who had spent the night with a sick uncle, returned to his shop early the next morning he found that the door had been forced open. A large quantity of Indian scarves and cloth, as well as notes and other currency totalling approximately 325 *piastres* were missing. Malot reported the theft to police, but for almost two months the crime went unsolved. In the meantime, Ratamsing had set up a lucrative little business selling the scarves and other stolen merchandise. In doing so he became part of the 'illegal economy' in stolen and received goods which flourished on the island.⁸⁶ One of his 'customers', not realising that the scarf was stolen property, later went to inquire at Malot's shop about buying another similar scarf to the one he was wearing. Malot immediately recognised it. Ratamsing's 'customer' was then able to lead police to the Indian 'businessman'. His profitable sideline uncovered, Ratamsing was charged with burglary. Found guilty, he was sentenced to transportation for seven years.⁸⁷

Another two Indian convicts from Bombay who were re-transported to the Australian penal colonies were Tajea Versay and Sheik Adam. Tajea Versay (convict no. 842) was found guilty of poisoning two young women and was transported to New South Wales in 1839.⁸⁸ Sheik Adam (convict no. 848), probably the most villainous of all the Indian transportees, was transported to Van Diemen's Land in 1841 for complicity in poisoning and theft.⁸⁹ Between 1834 and 1840 Sheik Adam deserted and was

⁸⁶ Anderson, *Convicts in the Indian Ocean*, p. 102.

⁸⁷ NAM JB 331, trial of Ratamsing, 23 Nov. 1843; TAHO, CON 37/1, transported on the *Ocean Queen* to Van Diemen's Land, arrived 3 Apr. 1844.

⁸⁸ NAM, JB 291, trial of Tajea Versay, 25 Jun. 1838; SRNSW, NRS 1155 2/8279, Court of Assizes, trial summary of Tajea Versay, 25 Jun. 1838, pp. 297–301.

⁸⁹ NAM, JB 307/312; trial of Sheik Adam, 8 Oct. 1840; SLNSW, TP, vol. 144, trial summary of Sheik Adam, 8 Oct. 1840.

recaptured a number of times and at one point was wanted in connection with crimes varying from theft to murder. Convicts embarking in Bombay, as Clare Anderson explains, did not receive a penal tattoo or *godna*, a common practice with convicts transported from the locations of Bengal and Madras.⁹⁰ As a result these two convicts had been able to slip undetected into mainstream Mauritian society. If Ratamsing had had a tattoo on his forehead, indicating his convict status, his 'customers' may well have been a little more suspicious about buying his merchandise.⁹¹ These tattoos gave the name of the convict, the crime committed and the sentence, 'to mark collective convict status as well as individual identity.'⁹² Tattoos were permanent individual *Extraits* inscribed or 'stamped' on the bodies of convicts.

Indian convicts, such as Sheik Adam, also interacted with Indian indentured labourers. The offence for which he was eventually transported to Van Diemen's Land was committed in concert with Indian labourers Ichian, Gourdial (Manglou), Carim, (Calou) and Semser. After his last arrest, Sheik Adam explained to the police that it was at the request of his co-accused that he had made several cakes containing a poisonous substance, which they offered to unsuspecting victims. In June 1840 Zamor Fatatum, Pedre and Alexis had all been offered poisonous cakes by the group. As the poison was taking effect they stole clothing and money in various currencies. They

⁹⁰ After more than 50 years (commencing in 1789), the practice of tattooing Indian convicts embarking from Bengal and Madras ceased in 1849. Clare Anderson has told the story of Tajea Versay in *Convicts in the Indian Ocean*, pp. 94-96 and Sheik Adam in 'Unfree Labour and its Discontents: Transportation from Mauritius to Australia, 1825-1845', *Australian Studies*, vol. 13, no. 1, 1998, pp. 121-125. See also Anderson, *Subaltern Lives*, pp. 50-53.

⁹¹ Anderson, *Convicts in the Indian Ocean*, pp. 26-27.

⁹² Clare Anderson, 'Convicts and Coolies: rethinking indentured labour in the nineteenth century', *Slavery and Abolition*, vol. 30, no. 1, 2009, pp. 99-98. See also Clare Anderson, *Legible Bodies: race, criminality and colonialism in South Asia*, Berg, Oxford, 2004.

also took poultry and some cooking pots from the hut of Fatatum who later died as a result of eating the poisonous cake.⁹³ They were all sentenced to transportation for life.

Escape and Vagrancy

As the recruitment of indentured labourers gathered speed, the number of arrivals overwhelmed the colonial administrators in Mauritius. Discriminating legislation and punishment strategies were introduced to bolster the local government's control over this newly introduced servile Indian population. Additionally, as North-Coombes asserts, legitimising the ideology of planter authority and superiority was one way to secure social and economic 'breathing-space' for the colonists.⁹⁴ A protector for immigrants had been appointed in 1842 but he had limited powers. The plantation, as had been the case during slavery, would define the boundaries of the indentured labourers' existence. Although free, they were bound to the plantations by a labour contract. They were not free to leave until they had fulfilled the obligations attached to these contracts, usually five years.⁹⁵

Social alienation and unjust treatment by planters and their overseers often made matters worse and many of the indentured workers broke their labour contracts and became vagrants. The record of complaints made by the Indian workers of violent assaults and physical abuse for the period 1 January 1840 to 30 September 1840 was almost 400 (388).⁹⁶ The most common forms of assault and violence were beating,

⁹³ SLNSW, TP, vol. 144, Court of Assizes, trial summary for Sheik Adam, Ichian, Carim and Gourdial, 8 Oct. 1840.

⁹⁴ North-Coombes, 'From Slavery to Indenture', p. 79.

⁹⁵ Some committed suicide as the only way of escaping a bad situation.

⁹⁶ SLNSW, Parliamentary Documents for Great Britain and Ireland, report of proceeding of cases of assault, 1 Jan. 1840 to 30 Sep. 1840, vol. 28, 1840–41, pp. 7–105.

whipping and punching (often to the head and face) carried out by both masters and overseers. At other times complaints refer to the lack of appropriate medical care.

Encountering harsh, often brutal, working conditions many workers, regardless of the penalty, breached their contractual arrangements and deserted the plantations.

Deserting even an oppressive work situation and master became illegal and therefore a crime. To curtail these breaches of contract, Ordinance 5 of 1840 covenanted that a portion of the wages should be held back to keep the Indian labourers on the plantations.⁹⁷ This ordinance was implemented and in practical use in Mauritius until September 1840 when Governor Lionel Smith received a furious dispatch from Lord John Russell, in charge of the Colonial Office in London, to cease this local practice.⁹⁸

Introducing harsh vagrancy laws, restricting people's movements around the island and imposing curfews were some of the strategies put in place to uphold law and order.⁹⁹ Within a short time the jail in Port Louis was filled to capacity. Keeping potential lawbreakers off the streets after dark was an important part of reducing fear among the population.¹⁰⁰ If a serious crime was committed at night, the courts would at times apply additional years of incarceration or transportation to a sentence, a practice also used during slavery and apprenticeship. This supports the argument that the mindset of slavery and apprenticeship continued, at least during the first decades of the Indian migration scheme. By the early 1860s, the problem of vagrancy had

⁹⁷ Dispatch no. 21 from Acting Governor Powell to Lord John Russell, 15 May 1840, in SLNSW, Parliamentary Documents for Great Britain and Ireland, vol. 28, 1840–41, p. 3.

⁹⁸ Dispatch no. 58 from Lord John Russell to Lionel Smith, 26 Sep. 1840, in SLNSW, Parliamentary Documents for Great Britain and Ireland, vol. 28, 1840–41, p. 4.

⁹⁹ Lindsay Rivière, *Historical Dictionary of Mauritius: African Historical Dictionaries no. 34*, Scarecrow Press, 1982, London, pp. 58–59.

¹⁰⁰ Article 306 of the French penal code added to the severity of the punishment if the crime of robbery had been committed at night. 'Whosoever shall be found guilty of theft, committed during the night and with the help of break and enter shall be sentenced to the punishment of transportation or hard (forced) labour or of reclusion or jail'.

escalated to such an extent that a Vagrancy Depot was established to house those given a vagrant status.¹⁰¹

In 1842, just prior to the commencement of the government-sponsored migration scheme, Samba, a 21-year-old woman arrived from Madras. She was born in the French enclave of Pondicherry and, if she spoke any European language when she arrived in Mauritius, it was probably French. After her arrest for burglary and theft Samba explained that since arriving on the island she had absconded from her contracted employer and subsequently moved from workplace to workplace. She had no fixed address and therefore classed as a vagrant.¹⁰² Both planters and the Mauritian administration resented vagrants like Samba for their disruptive influence to the mode of sugar production, the unsettling effect on fellow workers and its corresponding criminal undercurrent.

The victims of Samba and her three male accomplices, including her husband Osensa (also known as Abdoula), were Eléanore and Frontin Léta, two Mozambican ex-apprentices. Samba first met Eléanore in early April 1843, in the busy wharf area of Port Louis.¹⁰³ The day before the robbery, Samba brought Osensa to the couple's house for a brief visit.¹⁰⁴ The next afternoon the young Indian couple returned with two other Indian males, Yacousa and Salicouty. Could they stay the night? The couple suggested the Indians could stay in a shed on the property. Having agreed on the

¹⁰¹ Clare Anderson, 'The Politics of Punishment in Colonial Mauritius, 1766–1887', *Cultural and Social History*, vol. 5, no. 4, 2008, pp. 418–419.

¹⁰² NAM, JB 331, interview with Samba, Examining Judge Henry Bruneau, 7 Jun. 1843.

¹⁰³ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Samba, Osensa, Yacousa, Salicouty, 1 Dec., 1843, pp. 33–39.

¹⁰⁴ NAM, JB 331, trial of Samba, Osensa, Yacousa, Salicouty, 1 Dec. 1843.

accommodation arrangements for the night the group shared food and drank wine provided by the Indians. Eléanore eventually went to bed but woke in the early hours of 23 April 1843, thinking her husband was coming into the bedroom. She soon realised it was not Frontin. Startled, she jumped up and managed to escape through the bedroom window and ran to the English merchant's house next door for help. When they returned to the house they discovered that the door to the house was off its hinges. The Indians were gone, as were the contents of a large chest in the bedroom and all their ducks and hens.

It took more than two weeks for Eléanore and Frontin Léta to track down Samba outside the Customs House in Port Louis. She was easily recognisable because of a scar on her left cheek.¹⁰⁵ They did not approach Samba at this point but went to the police station in the district.¹⁰⁶ The stipendiary magistrate gave them a letter and told them how to proceed should they see Samba again. He instructed them to 'wait in the area where they had seen the Indian woman, and if they saw her again to arrest her and take her to a police station and give them the letter they were carrying.'¹⁰⁷ Sometime later, Eléanore and Frontin saw Samba at the market in Port Louis. This time the couple gave chase and caught her. To add insult to injury, Samba was wearing one of the dresses stolen from Eléanore's chest. In apprehending Samba and later using the letter from the magistrate to legitimatise her arrest, Eléanore and Frontin invoked their own interpretation of the legal system and mapped their own legal parameters. The fact that a stipendiary magistrate had coached the Léta's in how to go about making an arrest, indicates that the colony's legal representatives at times engaged with colonial

¹⁰⁵ SLNSW, DLADD 540 /38/42, in the ship's description list her scar is described as cicatrices, which is new tissue forming over a wound and later contracting into a scar, p. 90.

¹⁰⁶ NAM, JB 331, trial of Samba, Osensa, Yacousa, Salicouty, 1 Dec. 1843.

¹⁰⁷ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Samba, Osensa, Yacousa, Salicouty, 1 Dec. 1843, pp. 33–39.

subjects in upholding the law. In other colonies, such as Australia, people would sometimes vigorously pursue lines of inquiry and take their findings to the police in the hope of getting a conviction. As Paula Byrne explains, people's 'perception of law' was not only about 'justice' or the 'rule of law' but also what type of behaviour constituted an 'offence'.¹⁰⁸

As in the cases of Joséphine and Simonette in Chapter Two of this thesis, the court felt Samba had been the main architect behind this crime. She had made the initial contact with Eléanore, befriended her and introduced her accomplices to the Mozambiquan ex-apprentices, offered them food and purchased the wine from the English merchant next door. Eléanore in her police interview accused Samba and her accomplices of poisoning their food and drink in order to commit robbery. The examining judge had been unable to find sufficient evidence to prove this allegation when the case against the four Indians came before the Court of Assizes in December 1843. They were all, however, found guilty of robbery and Yacousa and Salicouty were sentenced to transportation for 10 years. Samba and Osensa were sentenced to transportation for life.¹⁰⁹

Conclusion

Crime and punishment set in a broader context of the transition from slavery and apprenticeship to indenture serves to signpost a multitude of rapid social changes in the colony. The decision to commence a government-sponsored indenture migration

¹⁰⁸ Paula Byrne, *Criminal Law and Colonial Subjects: New South Wales 1810–1830*, Cambridge University Press, Cambridge, 2003, pp. 5–6.

¹⁰⁹ SLNSW, DLADD 540/38-42, Court of Assizes, trial summary of Samba, Osensa, Yacousa, Salicouty, 1 Dec. 1843, pp. 33–39.

scheme in 1843, in response to the perceived urgent need for labour to supplement and later replace apprenticed labour, changed Mauritian society and its history forever. The post-emancipation society of Mauritius was thus inextricably linked to colonial politics of labour migration and an expanding modern sugar industry. Richard Allen rightly points out that 'the nature and extent of capital investment in the Mauritian sugar industry bears directly upon our understanding of the island's past.'¹¹⁰

This chapter has shown that social pressures, as Mauritian society adjusted to waged labour, created a fertile ground for discontent and some Indian indentured workers became the victims or perpetrators of violent crimes. A simplistic labour strategy saw the need for male labourers override the socio-cultural lives of the new workforce. This labour policy resulted in a radical demographic shift and saw the Mauritian society experience the adverse effects of rapid migration. This policy also created a severe gender imbalance within the migrant population and put enormous stress on relationships between men and between men and women. The few Indian women who arrived in the colony in the initial phase of the migration scheme also gained a reputation, often undeserved, as 'amoral profiteers of sexual scarcity', which left Indian women vulnerable and unprotected.¹¹¹ The introduction of Indian indentured labourers added another layer to the Mauritian cultural and ethnic rainbow, forging new cultural, social and economic links across continents and colonial contexts.

¹¹⁰ Allen, *Slaves, Freedmen, and Indentured Laborers in Colonial Mauritius*, p. 2.

¹¹¹ Carter, *Lakshmi's Legacy*, pp. 240–241.

CONCLUSION

This thesis has used the lives of a cohort of Mauritian convicts to explore a series of important discourses which shaped both Mauritian society and the wider British Empire during the first half of the nineteenth century. The stories at the centre of this study have focused on a small number of mostly non-European convicts whose lives exemplify the manner in which the courts and unfree and free labour systems intersected. Their stories are potent reminders of the enormous, sometimes pragmatic, often reactive British nineteenth-century imperial apparatus put in place to locate and dislocate, place and displace thousands of people of varying ethnicities and geographical origins.

Through the lens of the law and the crimes committed by this cohort of Mauritian convicts, this thesis has explored significant events in this colony's history between 1825 and 1845. In the process it has demonstrated how important and dramatic transitions shaped and impacted upon this small British colonial possession. Careful analysis of court and related records has reconstructed the circumstances in which these historical Mauritian actors committed their crimes and the social context of their sentencing and punishment. The aim of this work was to create a comprehensive historical narrative incorporating the justice system, penal and transportation policies and the colonial and metropolitan debates around the slave trade, slavery and abolition and waged labour in the form of indenture. In attempting to achieve these goals this thesis has established a link between institutions, including the law courts, colonial

politics and imperial policies and in the process build an intrinsic portrait of this important early-nineteenth-century British colonial society.

Paula Byrne, in her work on the law and colonial subjects, has differentiated between two types of historians: the legal historian who is primarily interested in the legal framework of a society and how law is a reflection of mores and ideologies, and the social historian who focuses and reflects on key issues of public debate to increase the historical knowledge of a society and its people.¹ During the research for this thesis I have worn both historians' 'hats'. Firstly, through legal history, I positioned Mauritian legal development in the global context of European empire building and then explored the challenges of mixing two distinct legal traditions after the French relinquished *Isle de France* to the British in 1810. Careful analysis of the administration of law and its applications in Mauritius has been a main aim of this thesis. Secondly, taking a social historical approach, I demonstrated how administrative, political and social changes and transitions impacted on Mauritian society. Finally, using these historical disciplines to analyse the relationship between crime and punishment and colonial labour policies, it became evident that these approaches not only interacted with, but indeed depended on each other, and in various ways contributed to our understandings of the social dynamics and development of this important colonial hub of unfreedom.

As the British acquired new colonial territories they prioritised the introduction of law and other administrative tools to support the maintenance of power and retain social

¹ Paula Byrne, *Criminal Law and Colonial Subjects: New South Wales, 1810–1830*, Cambridge University Press, Cambridge, 2003, p. 5.

stability. As such, law was amongst the earliest ‘artifacts’ exported to its colonised peoples.² This kind of social engineering bestowed common law principles on colonial subjects as part of a larger civilising mission. Social progress, administered through law, was converted into universal frameworks and guiding principles for order and justice. These encounters often led to the mixing of legal systems, as was the case in Mauritius, to complete amalgamation of others or in some cases the total obliteration of existing legal cultures.

The official signing of the Proclamation Declaration between Britain and France on 5 December 1810 was a defining moment in the history of Mauritius. The former French colony obtained significant concessions from the British that allowed the inhabitants to retain existing laws, their customs and religion. As this thesis has highlighted, for decades after annexation, this generous capitulation proclamation meant the Mauritian legal fraternity remained a powerful force in this colonial society. As the British started to exert pressure to influence the colony’s institutions, such as the law courts, and export new laws and amend those considered harsh and outdated, in particular French penal law, the clash of legal cultures became a fractious and hostile affair of conflicting interests and ideologies. Imparting British imperial culture on the Mauritian colonial subjects became untidy and complicated, perceived as progressive in the metropole but experienced as interventionist and destabilising in the colony. As this thesis has demonstrated, the independent nature of the justice system in Mauritius was often at odds with intentions articulated by the metropolitan government. The appointment of John Jeremie to the office of general prosecutor in 1832 was an

² Richard Price, ‘One Big Thing: Britain, the empire, and their imperial culture’, *Journal of British Studies*, vol. 45, 2006, p. 627.

example where the empire and the Mauritian legal fraternity and the Franco-Mauritian elite clashed in dramatic fashion.

As a consequence of the continual frictions in the first decades of British rule, Mauritius in many ways acted as a legal laboratory and a battleground of ideas where opposing impulses ultimately lay tentative foundations for the future development of colonial societies. As this thesis has shown, the challenge of imposing British legal principles in Mauritius was emphasised by the extent to which a legal institution and its interpretation of law represent a dynamic bond between its people and their cultural heritage. The ideological battles did not only involve the evolution of the legal system in Mauritius but also the debates over the slave trade, the stand-off between the British pro-abolitionist and Mauritian anti-abolitionist forces and the dialogues around the implementation of an experimental waged labour scheme. The strong opposition by the Mauritian planters to the abolition of slavery helped galvanise metropolitan politicians and public opinion against slavery. It has been suggested that the vociferous elements of Mauritian society, wanting to retain slavery, unwittingly contributed to its downfall as the metropole in the end was forced to act decisively on the issue of slavery.

The legal friction in Mauritius was no more clearly illustrated than through the struggle over linguistic dominance in the Mauritian courts. Language, as a representation of colonial identity and power, was an important aspect of the colonising process and in Mauritius the retention of the French language in the courts reflected this struggle for power. Despite concerted efforts to make English the

dominant language both in the courts and in the community, the strong French language influence prevailed. The evolution of the Mauritian legal system was of course a lot more complex than the wrestle over the legal language but this battle typified the legal processes which over time saw the Mauritian legal system emerge as a classic example of the mixing of two European legal cultures, substantiated by its inclusion into the modern day global third 'legal family'.

In the two decades prior to the abolition of slavery, the practice of interchanging *Code Noir* and *Code Pénal* in the sentencing process of slaves shows how the courts in Mauritius tried to reflect changing attitudes to corporal punishments. Nonetheless, *Code Noir* was a useful tool in the defence of social hierarchies and served as an important element in the social control of slaves. When visiting Mauritius in 1826, the Commission for Eastern Inquiry (1826–1828) ideologically aligned itself with the old French laws by 'praising the spirit of *Code Noir*'. Commissioners William Colebrook and William Blair expressed the view that for those remaining in subordination of *Code Noir* it 'contained many valuable provisions for their protection and benefit and for their moral instruction'. The commissioners were less enthusiastic regarding the harshness of certain punishments set out in the code, in particular 'some of the denunciations against runaway slaves' which they regarded to be of a 'sanguinary character'.³ The commissioners' attitude sums up the British dilemma in Mauritius. While agreeing with the precept of *Code Noir*, they felt that the severity and rigidity of the French penal code governing slaves was outdated and did not reflect the changing views of modern British penal practices. The harshness of the slave code and the rigid

³ TNA, PP. 1829. XXV (338), letter from William Blair and William Colebrook to the Right Honourable William Huskisson, 19 May 1828, pp. 16-17.

nature of the codified French inquisitorial legal system, which applied the law within a prescriptive legal framework, offered little scope for discretion and made it difficult for the courts to reflect societal change. However, as this thesis has shown, the interchangeable use of *Code Noir* and the French *Code Pénal* gave the Mauritian courts a certain amount of flexibility to better reflect the move away from the severe corporal punishment of slaves. However, a reversal of this trend would occur during the apprenticeship era (1835–1839).

Post emancipation, the complicated administrative shift to state-sanctioned punishment of apprentices was administered through the powers invested in the newly appointed stipendiary magistrates in all former slave colonies within the British Empire. The heavy-handedness of this punitive arm of the state in Mauritius brought into sharp relief imperial penal policies implemented to keep control of the apprenticed labour force. Status crimes such as breaches of contract and marronage would incur severe punishments. The most common form of corporal punishment was flogging or whipping with a cane. In Mauritius, some startling statistics led London to issue a ‘please explain’ request with regard to the punishment regime in the colony. The Mauritian authorities justified the inflated punishment figures by blaming rogue elements within the apprentice population. The justification for this harsh punishment of apprentices was the belief that this would eventually turn them into useful workers. These attitudes eventually filtered back to the metropole questioning the validity of this new labour scheme. In the end, it was deemed a failure because it appeared to constitute slavery in a different guise. The scheme came to an abrupt end in 1838.

Ian Duffield's assertion that colonised subjects 'make history but not the circumstances in which they act' closely reflects the Mauritian experience.⁴ Most of the Mauritian convicts were either of African or Asian origin. Some were victims of the slave trade or born into slavery or free Mauritian Creoles. Others were from Indian or Chinese rural backgrounds, swept up in the new experimental indenture migration scheme. Yet others were Indian convicts, originally transported to Mauritius, who committed further crimes in the colony and as recidivists were sentenced to be re-transported. Many of the crimes committed by this cohort, such as theft, arson, stock killings and robberies were motivated by proximate circumstances. These include stealing to survive in the immediate aftermath of the abolition of slavery and apprenticeship; personal provocations or ill treatment; while on the run either as a slave, apprentice, convict or vagabond labourer; inter-relationship quarrels and disagreements; contractual labour breaches or the need to escape threatening situations. Other crimes must be considered just plain criminal or opportunistic in character.

Those who eventually ended up before the courts in Mauritius were typically victims themselves, either through circumstances of slavery, apprenticeship and indenture or already part of the British convict system. The various social contexts which gave impetus to many of the crimes were in fact symptomatic of the oppressive institution of slavery and later a society undergoing rapid social change through the implementation of new labour policies. These convicts' experiences were deeply intertwined with colonial policies which endeavoured to dominate and control their

⁴ Ian Duffield, 'Daylight on Convict Lived Experience: the history of a pious Negro servant', in Peter Chapman, Richard Ely and Hamish Maxwell-Stewart, eds, 'Exiles of Empire: convict experience and penal policy 1788–1852', *Tasmanian Historical Studies*, Special Convict Issue, vol. 6, no. 2, 1999, p. 29.

lives and intimacies. As such, both pre and post conviction, the lives of these Mauritian convicts were at the caprice of European imperial policy and legal jurisdiction. The historical context, in which these convicts lived, tangled in ‘the web of empire relations’ as Duffield writes, ‘cannot be excluded, particularly when scrutinizing a life subjected to extreme relations of domination.’⁵

In Mauritius, as was the case in metropolitan society, competing gendered visions of masculinity and femininity influenced culture and shaped ideas and values. Through the Mauritian trial records, this thesis has demonstrated that gender and law intersected in multiple ways and showed that the courts were more than just a neutral backdrop in the debate about gender relations. The role of gender filtered through many aspects of the Mauritian convicts’ lives and experiences, reflected through laws, legal decisions and policies. Women’s presence in court proceedings also initiated debates concerning crime and gender and, by disaggregating gender, this thesis has added another layer of historical analysis to illustrate social relations and societal change.

In the court application for clemency to avoid the death sentence imposed on the young female slave Sophie, the court’s views of the correlation between female bodily changes due to pregnancy and crime saw gender and law coalesce. The persuasive plea for clemency became part of a legally gendered argument, mitigating her criminal behaviour due to diminished responsibility during pregnancy. Her death sentence was commuted to transportation for life, reflecting the metropole’s new social sensibilities regarding women and mothers. Additionally, this case study highlights how administering a foreign legal

⁵ Duffield, ‘Daylight on Convict Lived Experience’, p. 29.

system from afar can influence legal outcomes as the uncertainty and confusion relating to both the timing and promulgation of French laws benefitted Sophie.

The Mauritian female convicts committed murder and arson, took revenge on their slave master, mistress or employer, rebelled against ill treatment or bad living conditions, colluded with runaway slaves and participated in organised criminal activity, as well as other opportunistic crimes. The judicial process involving these women only amplified the dichotomy between notions of acceptable female behaviour and female deviance, and between the colonial morally corrupt female and public metropolitan sensibilities. The women transported to the Australian penal colonies were colonial subjects whose actions challenged accepted notions of gender and identity and, as with their criminally convicted male counterparts, added to the fear of collapse of the moral and social order in the colony.

Convict transportation also severed family ties. As many of the Mauritian transportees had children, a sentence to transportation invariably led to permanent separation of family members. The case studies in this thesis show how parents and children tried desperately to hold their family unit together. In the case of married couple Marcelin Currac and Joséphine Ally, they made an impassioned plea to have their two youngest children accompany them on the journey to Australia, while leaving their two older children with an adult daughter.⁶ The reluctance on the part of the authorities to intervene saw all the children remain in Mauritius. Nereus Verloppe, Elisabeth's father, lodged a heartfelt petition to have his daughter and Constance Couronne returned to Mauritius because their harsh sentences reflected the fear and paranoia in

⁶ NAM, JB 253, trial of Joséphine Ally, Marcelin Currac and Hypolite, 17 Sep. 1833.

Mauritian society at the time of the abolition of slavery. The petition was unsuccessful.⁷ Consequently, Constance and Elisabeth, both sentenced to transportation for life, never saw their families again. In Elisabeth's case, for a time, fleeting correspondence kept family links intact, however the separation of parents and children, transported or left behind, remind us of the emotional cost of penal transportation.

In Britain, since the 1780s, a humanitarian drive supporting the abolition of the slave trade ran across political boundaries, gender and class and culminated in the Slave Trade Act of 1807. The French-Mauritian plantocracy's reluctance to accept the Act hinged on their belief that the emancipation of the slave population would be detrimental to the slaves and would have enormous economic and social implications for the colony. Their request for an exemption fell on deaf ears. The defiance of the Mauritian plantocracy and the local Mauritian administration's unwillingness to tackle the illegal slave trade head on presented the metropole with serious issues of compliance to the Act. The planters' denial of collusion with local authorities and private individuals runs contrary to evidence which show that the Mauritian colonial elite used whatever tactics necessary to circumvent the Slave Trade Act of 1807 and imported thousands of illegal slaves.

By the early nineteenth century the rhetoric regarding slavery was changing. It went from positively affirming slave ownership to focusing on the civilising process within the institution of slavery. On the Bel Ombres estate in Mauritius, run by Charles

⁷ SRNSW, NRS 1155, 2/8255, Supreme Court, trial summary, Constance Couronne and Elisabeth Verloppe, 24 Sep. 1833 pp. 81–88; NAM, RA 663, the humble petition of Nereus Verloppe, 4 Jun. 1841.

Telfair, an experiment testing the veracity of this civilising process took place in the first couple of decades after British annexation. Telfair's utopian plantation philosophy tried to reinvent the image of plantation life. His professed aim was to show that if a plantation was run along the same principles as a modern prison, slaves would become dutiful and docile workers in preparation for their eventual freedom. The fact that marronage was a continual problem on the estate suggests that there were many flaws in Telfair's theory.

Meanwhile, in the mid 1820s the metropolitan campaign against slavery solidified, and plantations such as Telfair's came under intense scrutiny from pro-abolitionists. As the emancipation debate continued, humanitarian sentiments were becoming part of British self-image and went to the heart of British identity. By the early 1830s, slavery, as an institution, had become unjustifiable both on racial and humanitarian grounds and what was unacceptable in the metropole became equally difficult to defend in the empire's many overseas possessions. The moral crusaders of the abolition movement saw the end to slavery as the touchstone for measuring their social commitment as metropolitan citizens. Telfair saw these ideas as 'perverted philanthropy', again highlighting the divergent views between the metropole and the colony.⁸

As discussed above, the apprenticeship system was short lived and in Mauritius it was dismantled in March 1839. Apprentices' unwillingness to stay on the plantations to

⁸ Charles Telfair, 'Preface' in Charles Telfair, *Some Accounts of the State of Slavery at Mauritius: since British occupation in 1810 in refutation of anonymous charges promulgated against government and the colony*, Piccadilly, James Ridgeway, 1830, p. xiii.

work amongst the relics of slavery and perform the degrading and backbreaking work using the *pioche* (hoe) walked off the plantations in large numbers. The Mauritian authorities were however quietly optimistic that after the initial exuberance and a taste of freedom, former apprentices would come to their senses and return to the plantations. The reality was that ex-apprentices wanted to forge a living outside the plantation economy and, overall, the British were unsuccessful in persuading the majority of ex-apprentices to sign new labour contracts. Bestowing freedom on all apprentices also led the Mauritian administration to become progressively more worried about social unrest. To deal with such an eventuality the colony relied on an increased police presence on the island. The predicted mass unrest did not eventuate. However, due to the impoverished state of many ex-apprentices they committed crimes to keep their new fledgling communities alive. This surge in petty crimes against property was an ongoing concern for the colony's administration and law enforcement.

How the courts dealt with crime throughout the various transitional periods of profound social change in Mauritius and how these changes came to reflect sentencing patterns is important in the context of this colonial society. The transition from slavery to apprenticeship affected the number of felons sentenced to transportation, as did the transition from apprenticeship to indentured labour. For approximately two years after the abolition of slavery, the Mauritian courts stopped sentencing convicts to transportation altogether, preferring to inflict corporal punishments and custodial sentences enabling an offender to re-enter the labour pool once the sentence was completed. This demonstrates how the courts reflected the atmosphere of uncertainty

and general unease when it came to the ability to procure labour to work on the plantations after the introduction of the apprenticeship system in 1835. As the apprenticeship system became established and the colonial authorities and the planters came to the realisation that the new labour scheme meant ‘business as usual’, transportation recommenced, including that of apprentices. The fact that Indian indentured workers were filling any gaps in the labour market also eased the concern over labour shortages.

In Mauritius, during the apprenticeship period, lack of sentencing to penal transportation did not adhere to the traditional pattern of social change. The profound change from an unfree to a free labour system, and in particular in a plantation society reliant on a constant supply of labour to support the mono-agricultural economy, show a temporary halt to transportation on economic grounds, indicative of the correlation between legal decision making and labour systems. Conversely, after the abolition of the apprenticeship scheme, the knee-jerk reaction of the courts to the concerns about rising crime among ex-apprentices saw a sharp increase in the number of felons sentenced to transportation. As this thesis has shown, there is a close link between changing labour systems and an increase or decrease in felons sentenced to transportation. Once the labour market stabilised, both during the latter part of the apprenticeship period and during the early indenture migration phase, the courts increased the sentences to transportation.

The Mauritian trial records have also revealed how the courts communicated directly with colonial subjects by publicly displaying *Extraits* to convey messages of the serious consequences of certain crimes, in particular crimes against property. These

placards, displayed at strategic locations around the island, gave details of the crime and the sentences in certain criminal cases. The instruction to display an *Extrait* appears to be more frequent during the early 1840s with the rapid influx of Indian contract labourers to work in the colony. This shows that at times and in certain circumstances, the Court of Assizes was pro-active in promoting law and order and made sure that the message of the court's decisions filtered through to the population at large.

The introduction of convict transportation in slave societies such as Mauritius was calculated to impact a population accustomed to dehumanising labour practices. The British intra-colonial transportation flows within the Indian Ocean show that convict transportation was not limited to flows from the metropole. Mauritius and other colonies within the Indian Ocean were all part of a sub-system of 'middle passages', often following in the wake of old slave routes.⁹ This highlights intra-colonial geographical transportation patterns within the British Empire, as opposed to privileging transportation from the metropole to the colonies. The colony of Mauritius hence became part of a short-lived British imperial system of convict transportation.¹⁰ The convict transportation flows were often characterised by a lack of uniform policy, time lags in communication due to geographical distance, internal colonial interests as well as strong or weak local administrators. These 'temporary' systems operated both in the Atlantic and in remote locations in the Indian Ocean World in the first half of the nineteenth century.

⁹ Emma Christopher, Cassandra Pybus, and Marcus Rediker, *Many Middle Passages: forced migration and the making of the modern world*, University of California Press, Berkeley, 2007.

¹⁰ Compared to transportation flows between Britain and Australia lasting almost 80 years and between Britain and the American colonies lasting almost 50 years. Diana Paton, 'An "Injurious Population": Caribbean-Australian penal transportation and imperial racial politics', *Cultural and Social History*, vol. 5, no. 4, pp. 449–464.

Mauritius was racially diverse, but so was Australia, albeit to a lesser extent. Unlike popular views of the Australian convict population as consisting entirely of felons of Anglo/Irish origin, the presence of Mauritian, Caribbean and Cape convicts demonstrate that the Australian penal colonies were in fact multi-racial societies.¹¹ The members of the Mauritian cohort represent a small but significant group of African and Asian convicts. During their lifetime many transitioned from being slaves, *affranchises* (freed slaves), apprentices or ex-apprentices, free Mauritian Creoles, Indian convicts or indentured workers to convicts in Australia. The ethnicities, the diverse cultural heritage and languages of these convicts represent the non-European convict story within the larger history of convict transportation to Australia. This thesis has shown that Paton's suggestion of a racially homogenised Australian penal society, although it may have been desirable, was in reality unattainable as transportation policies varied across colonial spaces. Race, at least in the first half of the nineteenth century, was a more fluid concept than it became later on, when a distinct hardening in the conceptualisation of race occurred.

Additionally, in the period 1832 to 1835 (Mauritius officially abolished slavery on 1 February 1835) the Mauritian trial records show that it was the status of the felon, not the colour of his or her skin, that was the deciding factor in determining the penal destination of those sentenced to transportation. Equally, the severity of the sentence imposed on free Mauritians related directly to the status of his or her accomplice. This brief period of status directed convict transportation only lasted until the abolition of slavery. After this time, the true rationale behind the Mauritius to Australia intra-

¹¹ For more on black convicts in Australia refer to Cassandra Pybus, *Black Founders: the unknown story of Australia's first black settlers*, University of New South Wales Press, Sydney, 2006.

colonial convict flow related to fiscal considerations and geographical proximity rather than race.

The answer to the labour conundrum in Mauritius, after almost the entire apprentice population walked off the sugar plantations in 1839, was to look to other labour markets within the Indian Ocean rim and beyond. India, with its large poor, rural population was an obvious target for recruitment. The scale and speed of the government-sponsored migration scheme implemented from 1843 saw one labour force virtually supplant another. It is therefore impossible to ignore the significant ethnic and cultural impact this group of labourers had on Mauritian society. Indian cultural values played a part in both the character and context of the crime and violence experienced within the Indian labouring population.

As a plantation society, the regulation of gender roles was at the core of imperial power and important in shaping socio-economic relations. The unintended consequence of the political decision to initially introduce an almost entirely male indentured labour force was to create an artificially skewed gender imbalance which impacted negatively on gender relations in the camps. Equally, the population density and the poor living conditions within the labour camps had a detrimental effect on personal relationships which also impacted on crime. Lateral violence, as illustrated through the case studies of Indian workers, affected both men, women and children during the early years of indenture.

The lateral violence between male perpetrators sentenced to transportation was mostly crimes of assault and arson with the intention to both destroy property and take lives.

The evidence in the trial records also show that some of the most severe and brutal personal attacks, which resulted in a conviction to transportation, were against Indian women. Contemporary characterisations of Indian female immigrants as morally flawed, assumptions about the prescriptive gender roles within Indian family life, cultural practices and religious customs have often been blamed for the high incidence of lateral violence in the labour camps occupied by Indian indentured workers in the first decades of the new labour scheme. As this thesis has shown, however, environmental factors also played a significant part in the incidents of violence. The geography of the camps, the terrible living conditions on many plantations, the skewed gender ratio and the lack of family liaisons all played a part in the violent behaviour of some of the labourers. One of the key lessons from the Mauritian experiment was the realisation that the social cohesion and wellbeing of the indentured labour force needed to include a balanced male/female ratio. Within the British Empire, Mauritius again served as a ‘crucial test case’ and an important testing ground for future labour migration schemes in other British colonies.¹²

Although the Mauritian convicts represent a tiny minority of all those transported to Australia, the very fact that transportation from Mauritius required special arrangements to travel on minor vessels, not on specially fitted out as convict ships, makes them worthy of attention. Their narratives provide a window on a number of issues that occupied the attention of the courts and colonial administrators including the practice of law, gender, slavery, abolition and imperial labour politics. We are reminded, through the fragmentary information collected from the Mauritian trial

¹² Richard Allen, ‘Licentious and Unbridled Proceedings: the illegal slave trade to Mauritius and the Seychelles during the early nineteenth century’, *Journal of African History*, vol. 42, no.1, 2001, p. 115.

records, that individually, and as a cluster, their lives were defined and shaped within an early-nineteenth-century colonial slave society in transition. At a time when the legitimacy of the institution of slavery was being questioned, the courts of Mauritius—like those in the Caribbean—struggled to take account of changes in power relations, and the stories of these Mauritian convicts, as told in their court records, are permeated with the larger expectations and anxieties that reflect the times in which they lived.

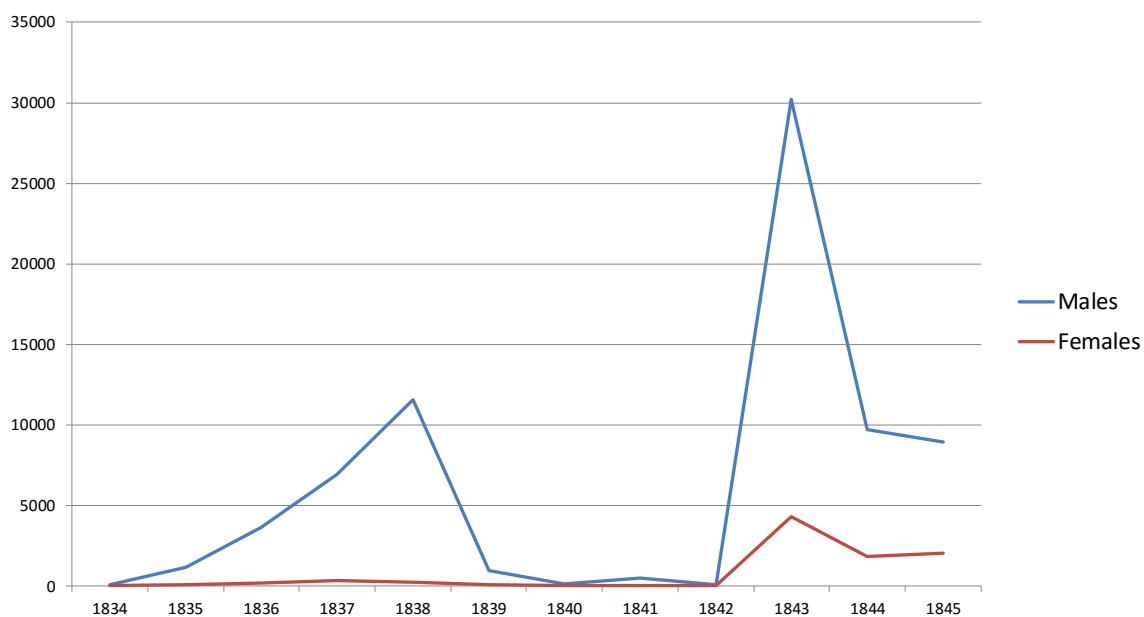
Finally, it is important to remind the gatekeepers of British colonial and convict history that the stories of this minority group from the Indian Ocean Island of Mauritius, their place of trial and their experiences are just as important, just as compelling and just as interesting as the stories of those who came from Britain. After almost 200 years of silence (mostly through linguistic barriers), these convicts claim their rightful place in Mauritian and Australian history. The stories of this cohort, among 168,000 convicts who arrived on the Australian shores during the transportation era, deserve to have the light shone on their experiences and these convicts need to be part of the historiography which formed and informed the histories of both Mauritius and Australia.

This thesis has also breathed life into an under-explored aspect of British imperial and Mauritian and Australian colonial histories and has demonstrated that some of the pre-conceptions about the homogeneity of the Australian convict population, which in turn bears directly upon our understandings of Australia's identity formation, need to be acknowledged. This thesis is not just a new inflection on an old story; it presents a

fresh body of scholarship for future dissection and expansion. If nothing else, it should make us reflect on the historiography of these convicts' pre-transportation experiences in Mauritius and create enough curiosity to extend future research already commenced by Edward Duyker, Clare Anderson, Cassandra Pybus and James Bradley by engaging in further detailed examinations of how the lives of this cohort of convicts unfolded once disembarked on Australia's 'fatal shore'.

Appendix 1

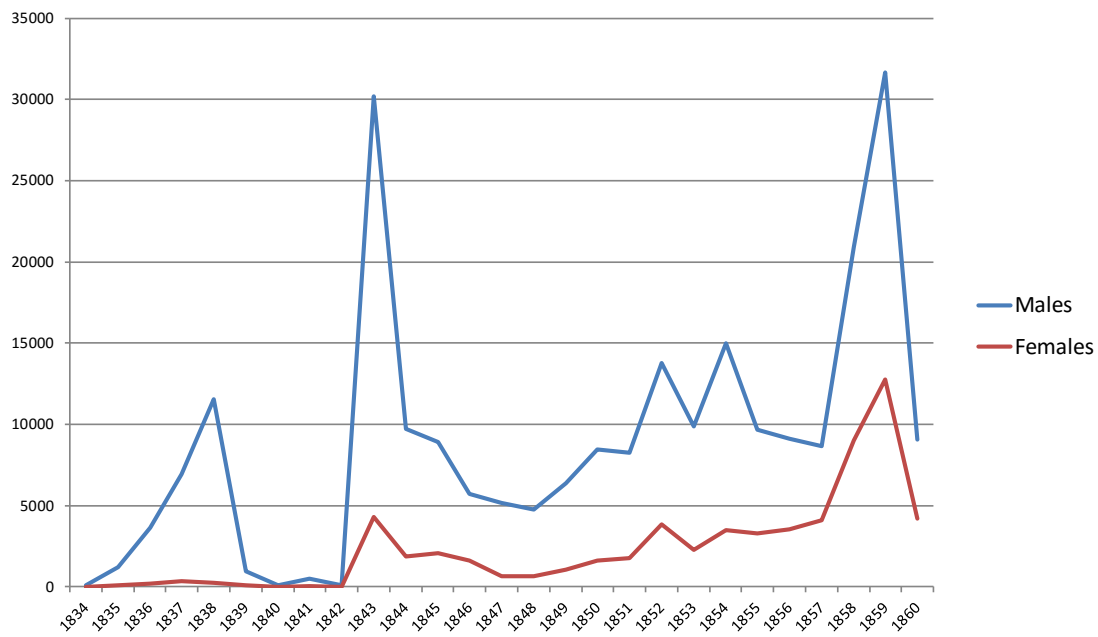
Indian Immigration to Mauritius 1834 – 1845



Source: M Carter & S Deerpalsingh, Select Documents on Indian Immigration Mauritius 1834-1926 Vol. II

Appendix 2

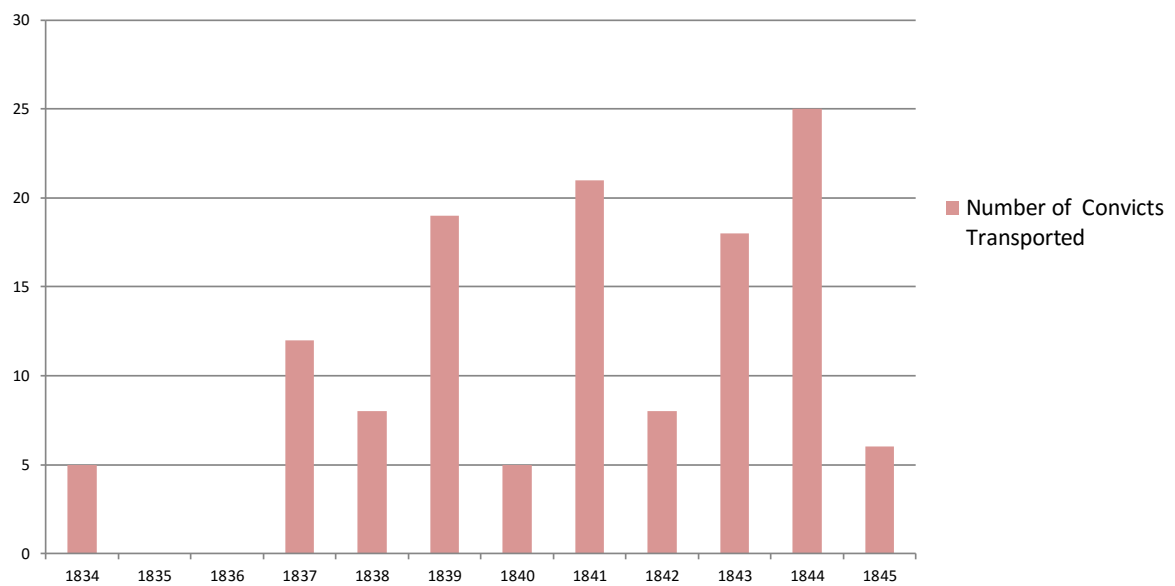
Indian Immigration to Mauritius 1834 – 1860



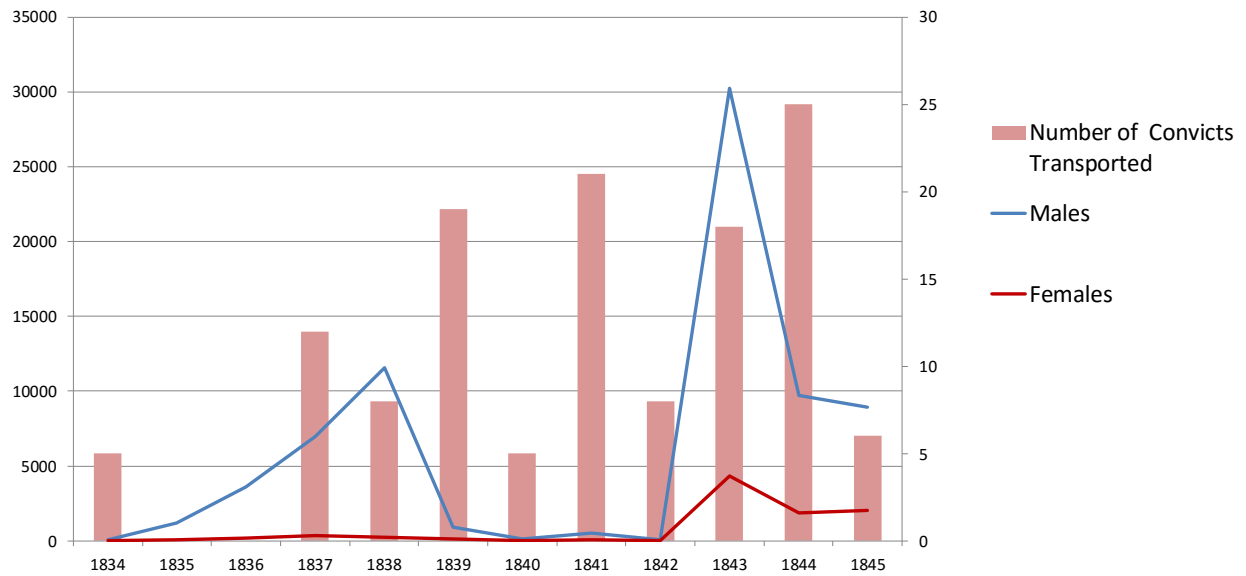
Source: Marina Carter & S Deerpalsingh Select Documents on Indian Immigration Mauritius 1834-1926 Vol. II

Appendix 3

Convicts transported from Mauritius to Australia 1834-1845



Source: JB Series, National Archives of Mauritius

Appendix 4**Convicts transported from Mauritius to Australia 1834-1845
(with Indian Migration Pattern)**

Source: JB Series, National Archives of Mauritius

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- JB 308, Shenmursing, 25 Mar. 1840.
- JB 311, Palemy, 6 Sep. 1841.
- JB 314, Cécile Louis, 4 Dec. 1840.
- JB 316, Celestin Jeanne Catherine, 25 Mar. 1841.
- JB 318, Edmond, 6 Mar. 1841.
- Wetia Hong, 17 Oct. 1841.
- JB 322, Maria Simonette, 9 Jul. 1839.
- JB 322, summary by examining judge, Henry Bruneau, 21 Jun. 1838
- JB 322, medical report by Medical Officer Pierre Bernard, 20 Nov. 1837.
- JB 325 Seik Mira, 6 Sep. 1842.
- JB 325, letter from Stipendiary Magistrate E. C. Kelly to chief commissioner of police, 6 Feb. 1842.
- JB 325, John William Davis, 27 Mar. 1843.
- JB 329, Petit Peroumal, 2 Mar. 1842.
- JB 331, Ratamsing, 23 Nov. 1843.
- JB 331, interview with Samba, Examining Judge Henry Bruneau, 7 Jun. 1843.
- JB 330, Itchingono, 1 Mar. 1842.
- JB 335, John William Davis, 27 Mar. 1843.
- JB 338, Ragoo, 7 Mar. 1844.
- JB 338, Chéri Augustin and Jean Louis Miguel, 3 Jun. 1844.
- JB 340 Virapin (Petit Vira), 26 Jun. 1844.
- JB 341, Assa, 24 Sep. 1844.
- JB 346, Bassy, 15 Mar. 1845.
- JB 347, Moutouvirin, 13 Mar. 1845.

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- RA 121, letter from Charles Colville to Sir Lowry Cole, 20 Oct. 1831.
- RA 121, nominal list of all slaves belonging to inhabitants at the Mauritius at present at Robben Island, under sentence of transportation, 2 Feb. 1835.

- RA 121, letter from John Bull, Government House, Cape Town to G. F. Dick regarding the number of convicted slaves on Robben Island, 5 Feb. 1835.
- RA 121, return of convicts at Robben Island pertaining to Mauritius, under sentence of transportation, 21 Dec. 1839.
- RA 221, letter from General Prosecutor Rudelle to Colonel Barry, secretary in chief to the government, 30 Dec. 1823.
- RA 278, letter from Acting General Prosecutor J. M. M. Virieux to colonial secretary of Mauritius G. F. Dick, 3 Mar. 1825.
- RA 371, general police report with judgment of complaint filed by the slave Thérésia, 31 May-2 Jun. 1830.
- RA 371, Thérésia, general police report, 10 to 11 Jul. 1828.
- RA 510, response from Police Commissioner John Finniss to G. F. Dick, 28 Sep. 1833.
- RA 502, letter to Colonial Secretary G. F. Dick from the Chief Commissioner of Police, John Finniss, 10 Oct. 1833.
- RA 570, letter to Sir Lionel Smith from George Napier, 1 Sep. 1840.
- RA, 584, report from Police Commissioner John Finniss to the Colonial Secretary, 17 Apr. 1839.
- RA 584, letter of complaint from Mr. Montaulard to the civil commissioner of Savanne, 23 Apr. 1839.
- RA 584, report by Police Commissioner John Finniss to Governor Nicolay, 29 Apr. 1839, including a letter of complaint from Mr. Montaulard, 23 Apr. 1829.
- RA 584, Police Commissioner John Finniss, to the colonial secretary, 29 Apr. 1839.
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- RA 663, the humble petition of Nereus Verloppe, 4 Jun. 1841.
- RA 693, letter from Henry C. Wilson to the governor of the gaol in Port Louis, 18 Nov. 1840.

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- 20, Order-in-Council, 16 Mar. 1808.

20/7-12, report of the commissioners of eastern inquiry upon the slave trade at Mauritius, 1 Jun. 1829.

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SD 11, dispatch no. 41, relative to the slave Thérésia, from Charles Colville to Viscount Goderich, 8 May 1831.

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| CO 167/4 | original Agreement of Surrender of Mauritius to the British Empire, 3 Dec. 1810. <i>Code de Isle de France et de Bourbon</i> , Deuxième édition par M. Delaleu, Conseiller au Conseil Supérieur de L'île de France et Procureur du Roi du Tribunal de la même Ile, au Port-Louis – Ile Maurice. |
| CO 167/8 | ordinance no. 5, article 5, 1835. |
| CO 167/231 | minutes from James Stephen to Mr. Hope, 5 Oct. 1841. |
| CO 167/189 | dispatch no. 21, from Governor Nicolay to Lord Glenelg, 29 Feb. 1836. |
| CO 167/189 | letter from Stipendiary Magistrate John Weir to Governor William Nicolay, 3 Mar. 1836. |
| CO 167/189 | letter from stipendiary magistrate for Port Louis, John Weir, to Governor Nicolay, 5 Mar. 1836. |
| CO 167/189 | <i>Table 1 Extract of the Journal of the Special Justice of Port Louis</i> in letter from John Weir, stipendiary magistrate for Port Louis to Governor Nicolay, 5 Mar. 1836. |
| CO 167/189 | dispatch no. 35, from Governor William Nicolay to Lord Glenelg, 23 Apr. 1836. |
| CO 167/189 | letter from Glenelg to Governor William Nicolay, 12 Jan. 1837. |
| CO/167-201, | letter from Stipendiary Magistrate Anderson to G. A. Dick, 21 Sep. 1837. |
| CO 167/205 | enclosure in Glenelg to Nicolay, Nov. 6 1838. |
| CO 167/209 | dispatch from Governor Nicolay to Lord Glenelg, 13 Mar. 1839. |
| CO 167/209 | dispatch no 40, from Governor Nicolay to Lord Glenelg, 25 Mar. 1839. |

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- CO 167/231 minutes from James Stephen to Mr. Hope, 5 Oct. 1841.
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